



Saskatchewan Workers' Compensation Act

Committee of Review

2006 Report





Workers' Compensation Act
Committee of Review

c/o 400-1870 Albert Street
REGINA SK S4P 4W1

February 13, 2007

Honourable David Forbes
Minister Responsible for *The Workers' Compensation Act, 1979*
Room 208, Legislative Building
REGINA SK S4S 0B3

Dear Minister Forbes:

The Workers' Compensation Act Committee of Review, appointed pursuant to section 162 of *The Workers' Compensation Act, 1979*, respectfully submits this report of its review of the Saskatchewan workers' compensation system.

The Committee members have appreciated the opportunity to be of service to the workers, employers and the public of the Province of Saskatchewan.

Sincerely,

James E. Dorsey, Q.C.

Susan Buckle
Employer Representative

Jane Deters
Employer Representative

Ken Dishaw
Employer Representative

Jacquie Griffiths
Vice-Chair Worker Representative

Marg Romanow
Worker Representative

Lori Sali
Worker Representative

ACKNOWLEDGEMENTS

The Committee of Review extends its gratitude to the many individuals and organizations that participated in the review process through written submissions or presentations to the Committee.

Each Member of the Committee sincerely appreciates the time and effort you took to share your experiences, concerns and proposals to improve *The Workers' Compensation Act, 1979*, the regulations and the administration of the Act and regulations.

The Committee wishes to thank the Workers' Compensation Board and its staff, in particular Mitchell Scott, Executive Assistant to the Chief Executive Officer, for assistance and patience in answering the Committee's many questions and requests for information. The Board could not have been more cooperative and open to the work of the Committee.

The Committee thanks the Office of the Worker's Advocate for its willing support for the review process and assistance in gaining insights into the daily operation of the workers' compensation program.

The Committee could not have fulfilled its mandate without the enthusiastic support received from many persons in the Department of Labour under the leadership of the Honourable David Forbes and Deputy Minister Bill Craik. Without complaint, the Planning and Policy Division, under the leadership of Executive Director John Boyd, made many sacrifices to give our work priority.

Senior Policy Analyst Pat Parenteau served as the Committee's project manager and gave us unselfish and exceptional support with her exemplary competence, dedication, calm and patience. Executive Administrative Assistant Susan Pierce efficiently organized and managed logistical and administrative support with charm and humour. Pat and Susan were excellent ambassadors for the Department, impressive representatives of the provincial public service and invaluable to the work of the Committee.

Others to whom we are indebted for their contribution are: Mary Ellen Wellsch, Manager, Legal Policy and Legislative Services; Jennifer Landry, Administrative Assistant; and Mary- Ellen Illingworth, Librarian.

Finally, the Committee extends sincere appreciation to the members' employers for supporting time away from their workplaces and duties and to their families for supporting their time apart.

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1. MANDATE AND MEREDITH PRINCIPLES

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1.01 Committee of Review Purpose, Mandate and Process

The Committee of Review is a guaranteed, periodic forum for persons and organizations to recount their experiences with the workers' compensation program, advocate for their interests, advance their private and public policy agendas and make suggestions for reform and improvement.

The candour, frustration, anger and tears of the persons who spoke to us, demonstrated again the profound impact the legislation and decisions by the members and employees of the Workers' Compensation Board have on individuals, families and businesses.

The legislated requirement to appoint a Committee of Review every four years has existed since July 1, 1945. This approach has kept Saskatchewan current and responsive to the needs of workers, employers and communities.

Through assured and scheduled stakeholder review and reform, Saskatchewan has avoided the phenomenon of pent-up frustration and explosive political debate followed by Royal Commissions or other highly charged review mechanisms only at times of crisis and maximum controversy.¹

The Saskatchewan approach gives the dominant voice to the primary stakeholders in the system - workers and employers - to reform and achieve workable compromise on the scope, content, cost and administration of the workers' compensation program.

Governments accept and the Legislative Assembly enacts changes to express and maintain the recommended compromises without allowing either workers or employers to impose their will over the other or to veto necessary change and renewal of the program.

Most of the recommendations of the 2001 Committee of Review for amendments to the statute and regulations were enacted. Many of the recommendations for Board action were acted upon.²

¹ In 1983, Newfoundland and Labrador enacted periodic reviews by a statutory committee in the *Workplace Health, Safety and Compensation Act*, s. 126. The last committee report was issued May 30, 2006 (*Finding the Balance: The Report of the 2006 Statutory Review Committee on The Workplace Health, Safety and Compensation Act*).

² *Saskatchewan Workers' Compensation Act Committee of Review 2006 Report*, Appendix F.

Some persons asked us to resolve their individual differences with the Board. We cannot. It is not within our mandate to resolve individual differences. Some persons asked us to address questions they can pursue under existing provisions of the statute, regulations and policies. These we have not addressed. However, it is through the experiences of individuals and review of their files that we have gained insight into the day-to-day operation and administration of the statute, regulations and policies.

In selecting among the many issues competing for attention in our report and recommendations, Committee members are acutely aware of the responsibility entrusted to us and the expectations so many have that their issues will be addressed.

When identifying and selecting the issues to receive attention in this review, the Committee considered the government and Board initiatives since the twelfth Committee of Review report in 2001.³ The Committee was also mindful of the requirement to cost legislative and regulatory proposals.⁴

While our focus is necessarily on change and improvement, the Committee acknowledges and wishes to recognize the many dedicated employees of the Workers' Compensation Board and the Office of the Worker's Advocate who do good work everyday delivering the workers' compensation program under *The Workers' Compensation Act, 1979*, the federal *Government Employees' Compensation Act*⁵ and *The Special Payment (Dependent Spouses) Act*.⁶

This Committee of Review was appointed by the Lieutenant Governor in Council effective April 1, 2006 for a term not exceeding March 31, 2007 to report on all matters concerning *The Workers' Compensation Act, 1979*,⁷ *The Workers' Compensation General Regulations, 1985*,⁸ *The Workers' Compensation Act Exclusion Regulations*⁹ and the administration of the Act and regulations.

The members of the Committee are: James E. Dorsey, Q.C. (Chair); Susan Buckle, Saskatchewan Automobile Dealers' Association; Jane Deters, IPSCO Saskatchewan Inc.; Ken Dishaw, Saskferco Products Inc.; Jacque Griffiths, Canadian Union of Public Employees; Marg Romanow, Saskatchewan Union of

³ *Saskatchewan Workers' Compensation Act Committee of Review 2001 Report*, <https://www.wcb.sk.ca/WEBPortal/ShowProperty/WCBRepository/Form-Publications/publications/committee06review/2/pdfContent> (December 19, 2006).

⁴ Government of Saskatchewan, *Executive Government Process and Procedures in Saskatchewan: A Procedures Manual*, April 2004.

⁵ Government of Canada, <http://www.cmln.ca/34/34a/p/3f> (December 19, 2006).

⁶ Government of Saskatchewan, <http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/256/01.pdf> (December 19, 2006).

⁷ Government of Saskatchewan, <http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/W1/1.pdf> (December 19, 2006).

⁸ Government of Saskatchewan, <http://www.qp.gov.sk.ca/documents/English/Regulations/Regulations/W1/1R1.pdf> (December 19, 2006).

⁹ Government of Saskatchewan, <http://www.qp.gov.sk.ca/documents/English/Regulations/Regulations/W1/1R2.pdf> (December 19, 2006).

Nurses; and Lori Sali, Construction and General Workers' Union, Local 180. By custom, the Vice-Chair alternates between a representative of employer and organized employees from one Committee to the next. Ms. Griffiths was appointed Vice-Chair of this Committee.

The Committee reviewed policy and procedure manuals, decisions and data from the Workers' Compensation Board; met with members, executive and employees of the Board and representatives of the Office of the Worker's Advocate, the Fair Practices Office, Ombudsman, Provincial Auditor and the Information and Privacy Commissioner; undertook independent research and analysis; invited submissions from the public through advertisements in newspapers and weekly publications; and established a website (www.labour.gov.sk.ca/cor) to disseminate information, communicate by email and post some submissions.

Public hearings attended by all Committee members were held in North Battleford (September 18th); Saskatoon (September 19th and 20th); Prince Albert (September 21st); Yorkton (September 22nd); Swift Current (September 25th); and Regina (September 26th and 27th). The Committee heard 63 presentations and received 136 submissions.

The first three statutory Committees of Review in 1949, 1954 and 1958 were chaired by a current chair or past member of the Workers' Compensation Board. A more arms length relationship has been maintained since then. The chair, members, chief executive officer and staff of the Board were readily available to the Committee for all our inquiries and were responsive and helpful in all our requests for information. The Chair and Members of the Board made a written submission to the Committee that was presented at a public hearing by the Chair and CEO.

1.02 Affirming the Meredith Principles

All employment involves some risk of injury or illness and most workers have fear or apprehension and insecurity of losing their job or being unable to work because of injury or illness. The workers' compensation program is intended to alleviate the insecurity and provide relief against some of the financial burden for individuals, families and communities. It responds to the consequences of employment related injury and illness by providing medical aid, partial no-fault compensation and vocational rehabilitation assistance.

Saskatchewan's first no-fault compensation for injured workers was enacted in 1911.¹⁰ The current workers' compensation program, which had its 75th anniversary in 2005, began July 1, 1930 following the December 28, 1928 report of the Anderson Royal Commission,¹¹ whose recommendations were accepted

¹⁰ *Saskatchewan Workers' Compensation: A Committee of Review 2006 Report*, Appendix F.

¹¹ Percy M. Anderson, K.C., *Report of the Royal Commission Appointed to Enquire into Workmen's Compensation for Saskatchewan* (King's Printer, 1929).

and have endured. The following six recommendations are relevant to representations made to this Committee.

1. The enactment of a new *Workmen's Compensation Act* embodying the abrogation of the present system of compensation to injured workmen and their dependents and the adoption of a collective liability system similar to that of the Province of Ontario
2. That the Act be administered by an independent Board of three Commissioners devoting their whole time to its administration removable only for cause. As the success of the system depends so largely on the personnel of the Board, we suggest that personal fitness for the position be the determining feature in making appointments to the Board, and the remuneration be sufficient to attract good men.
3. That the new Act shall not at present include farm labourers, domestic servants and outworkers, but provision may be made for inclusion of the two first named classes at a later date. ...
4. The proposed Act include a clause as the Ontario Act ... to the effect that the decisions of the Board shall be upon the real merits and justice of the case and it shall not be bound to follow strict legal precedent.
5. That the decisions of the Board be final on all questions.
6. That adequate provision be made in the Act for an effective system of accident prevention based on the representation and co-operation of both employers and employees, such system to be under the jurisdiction of the Board.

The similar Ontario collective liability system that was endorsed by the Anderson Royal Commission enacted recommendations of the 1913 Meredith Report.¹² There are five "Meredith Principles" that are cornerstones of the program.

- **Compensation for workers without fault** - Workers give up the right to sue their employer and other employers and workers covered by the program in exchange for guaranteed compensation. The program is a compulsory substitute for tort claims in the courts and gives employers and workers immunity from suit for workplace negligence. Workers are entitled to medical aid and compensation benefits because they cannot go to court. The focus is to be on providing compensation, not finding fault.¹³

¹² The Hon. Sir William Ralph Meredith, C. J. C., *Final Report* (October 31, 1913) reproduced in *The Story of Workers' Compensation in Saskatchewan* (1997, Saskatchewan Workers' Compensation Board), pp. 154-176. https://www.wcb.sk.ca/WCB/Content/showReports/WCBReports/termsPublications/publications.cfm?CFWOrkrcst_comp/pdft/cancom (December 19, 2006).

¹³ There is an exception in s. 31 of the Act "Where an injury is attributable solely to the serious and willful misconduct of the worker, no compensation is payable unless the injury results in death or serious functional impairment."

- **Collective employer liability and funding** - Liability for workplace injury, illness and death is a shared, collective employer responsibility as part of the cost of doing business.¹³ The program is funded by assessments paid by compulsory, participating employers and revenue from investment, not by general revenue raised through taxation. Current day employers are expected to pay for all the present and future costs of current day injuries.
- **Security of benefit payment** - Injured workers and their families are to be promptly paid legislated compensation. The uncertainty and delay of legal proceedings in court is to be avoided. Future benefits are assured whether an employer ceases business, leaves the province or becomes bankrupt. To guarantee security of future payment, all projected medical, wage loss and other costs for present day injuries are fully capitalized today and the money is set aside and safely invested to be paid over time.
- **Administration and adjudication by an independent board** - Administration of the workers' compensation program is entrusted to the Workers' Compensation Board, an independent administrative tribunal, with representatives of workers and employers at the highest level of decision-making. It is not entrusted to the elected government of the day. The Board is a substitute for the courts and not an extension of the elected government. The Board decides all claims for compensation by workers and their families and all assessment amounts to be paid by employers based on impartial inquiry, not adversarial litigation. The Board is first and foremost part of the administrative justice system. It is not a private corporation or an economic development, social or dividend-producing agency for government, or others.
- **Exclusive jurisdiction given to Board** - The Board makes decisions on entitlement to compensation benefits based on the legislation and policies it adopts to implement the statutory program. The Board is not bound by legal precedent. Its decisions are final and not open to review by a court. It has the power and authority to judge each case on its individual merits.

Under these principles, the workers' compensation program has provided stability and competitiveness for employers and continuity of benefits for workers that have not been the experience in some non-Canadian jurisdictions.

With the exclusive authority and immunity given to the Board, it is expected the Board will be impartial, compassionate and vigilant in performing its responsibilities and fulfilling its mission. It is expected the Board and each employee of the Board will exercise the Board's enormous power over

¹³ Both the Crown in the right of Saskatchewan and Canada are covered by the program (s. 2(3)(ii)). Neither shares collective liability with each other nor with other employers. The Government of Saskatchewan is in a separate employer class (G51). The Government of Canada is a deposit account.

individuals in a fair and reasonable manner. It is expected the Board will be efficient and effective in the administration of the program for the communal and public good, not for private, selfish or profit interests.

The workers' compensation program has an important social policy role that predates, and is distinct from, other strands in our public social safety net, such as employment insurance, health care, social assistance and public pension plans. Income taxes, Employment Insurance benefits and the Canada Pension Plan are enacted, reviewed and changed from time to time by Parliament, not the provincial Legislative Assembly.

Workers' compensation benefits are exempt from income taxes.¹⁵ While receiving workers' compensation benefits to partially replace lost earning, workers are not eligible to contribute to Employment Insurance and the Canada Pension Plan. This can have short and long term adverse consequences for workers and their families when workers are unable to return to work for extended periods of time. Maintaining a fair integration of the provincial workers' compensation program with these federal programs and employer programs at the injured worker's workplace is a recurring issue before Committees of Review.

Five years ago, the Committee of Review was holding a public hearing in Regina on September 11, 2001. The New York State workers' compensation program had to respond to the deaths, injuries and illnesses caused by the attack on persons at work and the emergency and follow-up responses by other workers. Many are concerned that a pandemic will be equally onerous for Canadian workers' compensation programs.

Advances in medical knowledge, diagnosis and treatment and our understanding of latency periods, the gradual onset of disabling conditions, the progressively degenerative nature of some conditions and the connection between employment and physical and psychological illness are constantly expanding the responsibility of the program. New occupational diseases expand the responsibility of the program.

Changes in the organization of work, workplace expectations and managerial approaches to attendance and disability management create unforeseen and poorly understood or recognized consequences for the health of workers and the responsibilities of the workers' compensation program.

Social changes, such as the use of cellular telephones while driving, contribute to injuries and expand the responsibilities of the program.

¹⁵ Government of Canada, *Income Tax Act*, R.S.C., 1985, c. 1 (5th supp.), ss. 110(1)(f)(ii).
R202 (enacted as c. 52) (December 19, 2006).

New workplaces and technological innovations, such as nanotechnology, called the next industrial revolution by some, have new hazards, such as exposure to nanoparticles or new molecules, and unknown health risks for workers.¹⁶

On the frontier and apart from ethical questions, the movement toward syringe injection of microchip implants in workers for security reasons and to replace keys, passwords, swipe cards and bio-identification will present unexplored health issues that will become the responsibility of the workers' compensation program.

Changing worker demographics, not just from aging but also from reliance on migrant workers and higher use of temporary workers,¹⁷ is already presenting new challenges to workers' compensation programs.

Aware of the constantly and rapidly changing world and workplaces, this Committee's focus has been to identify issues and make practical recommendations in order to keep the Saskatchewan workers' compensation program current and consistent with the principles affirmed in the Anderson Royal Commission and the Meredith Principles.

¹⁶ Ostry, Claude, et al. *Nanoparticles: Actual Knowledge about Occupational Health and Safety Risks and Prevention Measures*, Institut de recherche Robert-Sauvé en santé et en sécurité du travail (IRSST), Québec, September 2006. http://www.irsst.qc.ca/cv/publications-cv_199210.html (December 19, 2006), and

Maynard, Andrew, and David Y.H. Pui. *Nanotechnology and occupational health: New technologies – new challenges*, Journal of Nanoparticle Research, Springer Netherlands, Volume 9 – Number 1, January 2007.

¹⁷ Benavides, F.G., et al. *Associations between temporary employment and occupational injury: what are the mechanisms?*, OSHA Online February 23, 2006,

<http://osha-bulletin.osha-slc.gov/OSHA-Bulletin/OSHA-Bulletin-02-23-06/OSHA-Bulletin-02-23-06.pdf> (December 19, 2006).

2. COVERAGE AND ELIGIBILITY FOR COMPENSATION

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2.01 Employment Growth and Distribution Changes

Since 2001, there has been a 2nd increase in employment in Saskatchewan. The sector with the greatest increase in employment is health care and social services. Its increase of 4,900 full-time and part-time employees is over one-half the provincial increase since 2000. The decrease in agriculture employment continued during this period.

Fig. 1: Employment Distribution (000s) (1996-2005)^a

Industrial Sector	1996	1997	1998	1999	2000
Agriculture	71.7	69.6	70.2	65.7	61.3
Other Primary Industries	14.3	16.4	16.0	13.0	14.8
Manufacturing	27.7	28.7	29.2	27.5	27.9
Construction	20.0	22.1	22.5	23.4	23.2
Transportation, Warehousing, Other Utilities	27.4	27.2	27.2	28.1	30.7
Trade	69.5	71.0	72.5	74.8	75.8
Finance, Insurance, Real Estate, Leasing	24.5	25.6	25.5	24.9	26.9
Service					
Professional, Scientific and Technical Services	14.4	14.6	15.7	15.3	16.4
Business, Building and Other Support Services	9.0	9.0	9.0	11.5	10.4
Educational Services	31.8	32.1	34.0	35.5	35.4
Health Care and Social Assistance	48.9	50.7	49.9	51.1	53.2
Information, Culture and Recreation	17.0	17.7	19.0	19.9	17.6
Accommodation and Food Services	28.5	28.8	26.9	30.0	31.2
Other Services	23.3	23.7	23.4	24.5	22.8
Public Administration	28.9	29.6	28.6	26.3	26.1
Total	456.9	466.8	470.5	471.5	473.7

Industrial Sector	2001	2002	2003	2004	2005
Agriculture	50.3	48.9	46.6	46.7	46.6
Other Primary Industries	16.2	15.4	17.1	19.0	18.6
Manufacturing	28.3	28.3	27.1	28.8	30.3
Construction	23.1	24.8	23.3	24.0	26.3
Transportation, Warehousing, Other Utilities	28.0	27.5	26.2	27.6	29.5
Trade	72.9	76.3	77.5	76.8	78.3
Finance, Insurance, Real Estate, Leasing	26.7	27.2	28.1	26.7	25.7
Service					
Professional, Scientific and Technical Services	17.6	17.6	17.5	17.1	18.0
Business, Building and Other Support Services	10.3	11.9	12.7	13.0	13.4
Educational Services	34.6	35.7	39.0	40.4	38.8
Health Care and Social Assistance	53.4	56.1	57.2	57.7	58.1
Information, Culture and Recreation	17.8	17.7	19.8	20.3	20.3
Accommodation and Food Services	31.5	31.8	33.1	33.1	29.7
Other Services	22.6	23.4	24.6	22.8	22.6
Public Administration	27.1	26.0	26.2	25.8	27.2
Total	460.4	468.6	476.0	479.8	483.4

Source: Labour Force Historical Review, 2005, Statistics Canada, Catalogue #711-0004NCR (CD-ROM)

^a Some of the information in this table may be different than the information contained in Figure 2 of Saskatchewan Workers' Compensation Act Committee of Review 2001 Report. Any differences are the result of revisions made by Statistics Canada based on updated Census data.

2.02 Industrial and Occupational Coverage of Workers' Compensation Program

There has been no change in the industries compulsorily covered by the workers' compensation program in Saskatchewan since 1985. Today, Saskatchewan has one of the lowest percentages in Canada of all workers covered by workers' compensation.

Because of Ontario's low percentage of coverage of workers in the province, it undertook a major consultation on the issue in 2002.¹⁹ To date, there has been no legislative or policy change.

Workers' compensation legislation applies to employers and workers engaged and employed in both provincial and federal works, undertakings and businesses.

Federal government employees are covered by a federal statute, the *Government Employees Compensation Act*.²⁰ By agreements between the provinces and the federal government, provincial workers' compensation boards administer this statute, which covers employees of the federal government and most Crown agencies, but not members of the RCMP and Canadian Forces. Merchant seamen, working outside the province and not covered by provincial workers' compensation, are covered by a special statute.²¹

The federal government does not have authority to legislate that federal works, undertakings and businesses will be compulsorily covered by provincial workers' compensation legislation. For example, banks are not covered by the workers' compensation program in Ontario and Nova Scotia.²²

The federal government has legislated that all employers over whom it has legislative authority must have a plan that provides "an employee who is absent from work due to work-related illness or injury with wage replacement, payable at an equivalent rate to that provided for under the applicable workers' compensation legislation in the employee's province of permanent residence."²³ This addresses wage replacement, but not health care costs arising from

¹⁹ Ontario Workplace Safety and Insurance Board, *Coverage Under the Ontario Workplace Safety and Insurance Act*, January 2002, http://www.wsib.on.ca/wsib/wsib-enc.nsf/LookupFiles/DownloadableFileWSIB_CoverageDiscussionPaper_SideCoverage.pdf (December 19, 2006).

²⁰ Government of Canada, http://www.cmbi.ca/ca/sta/p_3/ (December 19, 2006).

²¹ Government of Canada, *Merchant Seamen Compensation Act*, http://www.cmbi.ca/ca/sta/m_2/ (December 19, 2006).

²² Workplace Safety and Insurance Board of Ontario, *Employer Classification Manual*, Class 1 Other Services, 956 Legal and Financial Services. Government of Nova Scotia, *Workers' Compensation General Regulations* N.S. Reg. 22/96, Appendix A, http://www.canli.ca/ns/laws/regu/1996r_22_20060718/whole.html (December 19, 2006).

²³ Canada Labour Code, s. 259.1(2). The interaction of this requirement and provincial workers' compensation legislation was the subject of dispute in *Canadian Pacific Railway Company v. Ontario (Workplace Safety and Insurance Appeals Tribunal)* [2000] 1 O. No. 500 (Ont. Sup. Ct. of Justice) (Q1).

Fig. 2: Jurisdictional Comparison – AWCBC Percentage of Workers Coverage (2004)²⁶



In the past five years, the number of active employers registered with the Workers' Compensation Board increased by 1,194 or 3.8%. The Board reports the number of registered active employers in its annual reports and the number of assessed businesses in each rate code in its annual statistical summary. The total number of assessed businesses in all the rate codes is always higher than the number of active registered employers because some employers have businesses in more than one rate code.

The number of employers and workers who have voluntarily opted for coverage under the workers' compensation program has been increasing. In 2005, there were 441 churches, 236 marketing representatives and manufacturing agents not part of a provincially-based outlet that opted for coverage. Thirty private home owners opted for coverage for domestic employees.

No artists opted for coverage. The Saskatchewan Arts Alliance submitted the exclusion of artists from compulsory coverage should be repealed, as was recommended by the 1993 and 2006 Ministerial advisory committee on the status of artists.²⁷

Four Indian bands opted for coverage. Currently, Indian bands or band enterprises on reserves are expressly excluded from coverage.²⁸ The issue of band sovereignty and the responsibilities and authority of Parliament and the Legislative

²⁶ Association of Workers' Compensation Boards of Canada, *Jurisdictional Summary of Workers' Coverage*, January 2006, http://awcbc.ca/awcbc/english/board/pdfs/ASL-05-WORKER_COVERAGE.pdf (December 19, 2006). Yukon's coverage provided by the Yukon Workers' Compensation Board.

²⁷ *The Report of the Minister's Advisory Committee on Status of the Artist*, September 30, 1993, p. 46, *Final Report of the Minister's Advisory Committee on Status of the Artist*, July 2006, p. 24.

²⁸ Government of Saskatchewan, *The Workers' Compensation Act*, *Exclusion Regulations*, s. W-17.1 Reg 2 (effective August 12, 1985), ss. 3(m).

Assembly are complex and contentious. Economic development through band endeavours will not be immune from worker injury and illness. Regardless of their difficulty, the social and policy questions related to employment related injury and illness should be identified and addressed.

With shifts in employment distribution, the Board's calculation of the percentage of Saskatchewan workers covered by the program has increased slightly since 2001. There are discrepancies between the percentages reported by the Board in the following table and the percentages reported by the Association of Workers' Compensation Boards of Canada²⁰ because of the different methods they use to calculate the extent of coverage.

The Board calculates the percentage of Saskatchewan workers covered from estimates of the number of full-time equivalent employees covered by the program using data from Statistics Canada, payroll reports from employers and average wages.

Fig. 3: Percentage of Workers Covered by Workers' Compensation (1990-2005)

Coverage Profile	1990	1991	1992	1993	1994	1995	1996	1997
Active Employers	28,966	28,465	28,253	28,803	29,613	29,020	28,222	29,473
Employees in Sask.	454,300	453,400	448,500	450,800	453,700	459,400	457,500	470,000
Workers Covered	284,128	288,155	286,011	281,190	283,503	289,593	302,652	309,083
% of workers covered	62.54%	63.55%	63.77%	62.38%	62.21%	63.04%	66.15%	65.76%
Union Members	98,467	103,647	105,731	101,883	105,115	104,387	107,405	113,670
Opted for Coverage	5,861	5,602	5,327	5,425	5,493	5,367	4,633	4,758

Coverage Profile	1998	1999	2000	2001	2002	2003	2004	2005
Active Employers	31,246	31,110	31,657	31,225	31,327	31,630	32,125	32,851
Employees in Sask.	476,300	480,100	485,000	472,000	468,000	475,000	480,000	483,000
Workers Covered	315,190	314,048	306,469	308,719	306,518	309,362	325,565	327,064
% of workers covered	66.17%	65.41%	63.19%	66.91%	65.50%	65.13%	69.31%	67.72%
Union Members	119,000	126,500	119,800	124,000	125,200	128,000	129,800	131,000
Opted for Coverage	4,857	4,921	5,091	5,252	5,420	5,366	5,377	5,943

Sources: Active Employers: Registered with WCB Employees: Statistics Canada
 Workers Covered: Derived by WCB Union Members: Saskatchewan Labour
 Opted for Coverage: Registered with WCB

Since 1930, the following persons, listed in section 10 of the current Act, have been expressly excluded: school teachers; the industry of farming or ranching; persons whose employment is of a casual nature; outworkers; and household servants employed in a private home by a resident.

In the first decades after 1930, at their request or with their support, compulsory coverage was expanded to other initially excluded industries and occupations. The changes in the industries and occupations compulsorily covered are summarized in Appendix G.

²⁰ Association of Workers' Compensation Boards of Canada, *Definitions Of Key Statistical Measures (KSMs) And Indicator Ratios*, point 22, November 2005.

Today, the excluded industries and occupations are listed in a 1985 regulation – *The Workers' Compensation Act Exclusion Regulations* – made by Cabinet.³⁰ Excluded industries, employers and workers can apply to the Board to be voluntarily covered.³¹

School teachers have been excluded since 1930. Through the Saskatchewan Teachers' Federation, school teachers have their own self-insured and self-administered Income Continuance Plan in which approximately 12,500 teachers participate.³² It is not available to substitute teachers unless they are employed for a term appointment under a temporary employment contract.

The largest excluded industries are farming and ranching, which are not defined in the legislation. The Board uses the list of specific industries in the 1985 regulation to define farming and ranching. Consequentially, without any apparent rationale, some agriculturally related industries and operations are compulsorily included or covered by the workers' compensation program and some are not.

Fig. 4: Agricultural Operations Compulsorily Included and Excluded from Coverage

Included	Rate Code	Excluded	Rate Code
Artificial insemination	A11.01	Poultry farming and included wholesaling and grading eggs	A11.02
Poultry collecting and loading	A11.02	Commercial fishing	A11.06
Nurseries, trees or shrubs	A11.03	Trapping	A11.07
Mushroom farming	A11.11	Fur farming	A11.08
Market gardening	A11.12	Wild rice growing	A11.09
Honey processing and aparies	A11.15	Fish hatcheries	A11.10
Stockyards with railway entry	A11.17	Piggery	A11.14
Auctioneering of livestock and machinery	A11.18	Feedlot operations, other livestock yards	A11.16
Garden tilting, lawn maintenance, horticulture	A11.19	Corn or mixed farming	A21.01
Riding academies, stables	A11.20	Ranching, dairy farming	A21.02
Feed mills, seed plants, including cleaning, grain drying	M62.02	Croazing co-operatives	A21.03
Flax straw processing	M62.04	Custom harvesting	A21.04
Corral and feedlot cleaning, manure spreading, mowing, rock picking	R11.18	Mobile farm feed service	M62.04
Land clearing, brushcutting and stumping on Crown Land	R11.21	Land clearing, brushcutting and stumping on private land	R11.21
Fertilizer application	A21.06		
Vegetation control, mosquito and tree spraying	A21.07		
Operation of grain elevators, inland terminals and grain handlers	A31.01		

³⁰ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1 s. 3, *The Workers' Compensation Act Exclusion Regulations*, c. W-17.1 Reg. 2 (effective August 12, 1985).

³¹ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1 s. 12.

³² Saskatchewan Teachers' Federation, *ATI Income Continuance Plan Board*, http://www.stfk.ca/members/bcn/income_continuance_plan/atp_board.htm (December 19, 2006).

The largest group of employers that voluntarily opted for coverage in 2005 are engaged in farming and ranching - 1,147 employers opted to have their employees covered and paid assessments on a payroll of \$33,780,690.³³ These employers were engaged in grain and mixed farming, ranching and grazing co-operatives, dairy farming, custom harvesting and sod farming. The time loss injury rate in this distinct rate group was 5.02% and the average duration for which benefits were paid on an injury was 48.7 days, the second longest of all the rate groups.³⁴

In addition to 1,147 farming and ranching employers, nineteen piggeries, fifteen poultry farming businesses, twenty-one feedlot and other livestock operators, four wild rice growers, one fur farmer, three commercial fishing operations and two fish hatcheries opted for coverage. These 65 constitute over 13% of a light agriculture rate group that had 488 employers and a total assessable payroll of \$55,065,993. This rate group's time loss injury rate was 12.62% with average benefit claim duration of 19.5 days.

In 1974, a Board opinion to extend compulsory coverage to hog operations, poultry operations and feedlots was deferred. In 1998, in light of recent injuries to hog operation workers, the Board invited hog barn operators to consider the advantages of voluntary coverage after deferring a decision whether to include them. In 2001, there were 44 who had voluntarily opted for coverage. Industrial hog operations were included under labour standards legislation in 2002 by deeming them not to be within the meaning of farming.³⁵ In 2005, there were 33 industrial hog operations voluntarily registered for workers' compensation coverage, although there were approximately 294 in the province.³⁶

The largest hog operations have over 20,000 sows and usually 200 to 400 employees. Smaller operations have from 6 to 100 employees. Based on information provided by the Farm Health and Safety Council, there are an estimated 1,300 employees that are directly involved in the care of hogs, while an estimated 2,600 employees are involved in peripheral activities - administrative services, feed suppliers, truckers and maintenance workers. On average, the Occupational Health and Safety Division of Saskatchewan Labour investigates two to three incidences a year regarding workers who have sustained an injury or developed sensitivity to the barn environment.

"Piggery farms" are expressly excluded from coverage by the 1985 regulation.³⁷ In 2001, the Committee of Review recommended the Board examine extending compulsory coverage to all industrial hog operations. The Board reported to the Minister on November 10, 2003 that it had concluded hog operations should no

³³ Saskatchewan Workers' Compensation Board, "Employers Assessed by Industry Code with Payroll Estimates, 2005".

³⁴ *Statistical Supplement 2005*, Table 1.

³⁵ <https://www.wcbask.ca/WCBPortal/ShowPage.aspx?WCBRepository/FormPublications/publications/AnnualPublications/2005/statisticalsummary.pdf>, accessed (December 19, 2006).

³⁶ Saskatchewan Workers' Compensation Board, *Report to Stakeholders 2005*, p. 26.

³⁷ Government of Saskatchewan, *The Labour Standards Act*, c. L-1, ss. 4(3.1).

³⁸ Saskatchewan Agriculture and Food, Livestock Development Branch.

³⁹ Government of Saskatchewan, *The Workers' Compensation Act* [Saskatchewan Regulation], c. W-47.1 Reg. 2, ss. 3(s).

longer be excluded and the 1985 regulation should be amended by Cabinet. The Board did not expressly state this was an opinion of which it was giving notice to the Cabinet in accordance with section 11 of the Act, which states:

- (1) Where the board is of the opinion that any industry excluded from this Act may properly be brought within the scope of this Act, the board may notify the Lieutenant Governor in Council.
- (2) The Lieutenant Governor in Council may, upon notification mentioned in subsection (1), by order, declare that industry to be an industry within the scope of this Act on and from the date of the order or any other date that may be specified in the order.

Section 11(2) speaks of the Cabinet making an "order." It appears this subsection was overlooked in *The Regulations Consequential Amendment Act, 1989-90* and the correct legislative term is "regulation."⁵⁸

Recommendation:

Amend Section 11(2) to substitute the word "regulation" for the word "order."

The extent of coverage and list of specific exclusions have evolved in Saskatchewan, as in other jurisdictions, through compromise and political decision-making. Expanding compulsory coverage requires political courage to tackle difficult challenges. However, it is injured workers, their families and community supported social programs that pay the price for the workers' continued exclusion from the benefits of the workers' compensation program. The price will become higher as more dangerous industrial activities are undertaken in farming, livestock production and enterprises by Indian bands and others on reserve lands.

The inconsistency and a lack of rationale and clarity for who is included and who is excluded compounds as industries integrate and methods of production change. There is an important question whether it is by deliberate choice that, through public health care, the cost of employment related injury and illness for excluded industries is subsidized by all taxpayers while the same health care costs are borne as part of the cost of production for covered industries.

It is more than twenty years since *The Workers' Compensation Act Exclusion Regulations* were enacted. It is seventy-five years since the legislated exclusions in section 10 of the Act were enacted. It is time to undertake a comprehensive review and examination of compulsory and voluntary coverage.

⁵⁸ Government of Saskatchewan, *The Regulations Act Consequential Amendment Act, 1989*, c. 54, Schedule 2.

Recommendation:

The Board expressly notify the Lieutenant Governor in Council under section 11(1) that industrial hog operations may properly be brought within the scope of the Act.

The chairperson of the Board, together with a full-time member of the Board representative of employers and a full-time member of the Board representative of workers, personally undertake a comprehensive, province-wide consultation to identify and examine the industries, businesses and occupations not currently compulsorily covered by The Workers' Compensation Act, 1979 and the Board publish a report of its findings on its website no later than December 31, 2008. The report include the results of the Board's research and findings on the health care cost of employment related injuries in the industries, businesses and occupations not currently compulsorily covered by The Workers' Compensation Act, 1979 and the health care cost and wage loss insurance coverage in place for workers not currently compulsorily covered by the Act.

2.03 Earnings Coverage - Maximum Wage Rate

There is an upper limit on the amount of individual or insured earnings that is the basis for calculating a worker's compensation. Compensation is calculated on the lower of the worker's earnings or the "maximum wage rate."³⁰ Earnings beyond the maximum are not insured.

Under the statute, there are two maximum wage rates for two groups of injured workers. Section 38 provides for an annual review and adjustment of the maximum wage rate since 1975, for workers injured before September 1, 1985. The review and amount set each year is based on the "wages and salaries earned by workers who suffered injury and to whom compensation was paid during the period of one year immediately preceding September 30 of the year of the review." These are current wages and salaries. When the review reveals that 10% or more of those workers "are in excess of the maximum wage rate at the time of the review", the Board must increase the maximum wage rate by increments of \$1,000 to reduce the number to less than 10%.³¹

Section 38.1 provides for a legislated maximum wage rate for workers injured on and after September 1, 1985. This maximum wage rate has never been indexed.

³⁰ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, ss. 2(n), s. 38, s. 38.1 and s. 70(2).

³¹ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, s. 38.

The maximum wage rate under section 38 has always been lower than the maximum under section 38.1 and no one injured after September 1, 1985 would argue the maximum under section 38 should apply to him or her. Conversely, no one injured before September 1, 1985 could say they were in the group covered by section 38.1 for their 1985 injury before September 1, 1985.

As the maximum wage rate under section 38 increased annually and the maximum wage rate under section 38.1 remained at \$48,000 from 1985 to 2003, when it increased to \$53,900, the gap between the two narrowed, but the section 38 maximum did not exceed the section 38.1 maximum. At the time of the last Committee of Review, the gap was narrowing and the Committee recommended an indexing formula for section 38.1 similar to the one in section 38. Although the formula was not enacted, the legislated increase did forestall the section 38 maximum exceeding the section 38.1 maximum in 2003.

Effective January 1, 2007, for the first time, the maximum under section 38 on which compensation is calculated at 75% of gross earnings for injuries prior to September 1, 1985 exceeds the maximum under section 38.1 on which compensation is calculated at 90% of net earnings for injuries on and after September 1, 1985.⁴¹ The maximum wage rate under section 38 is likely to be \$59,000 or higher January 1, 2008.

Fig. 5: Maximum Wage Rates - Sections 38 and 38.1 (2000-2007)

Section	2000	2001	2002	2003	2004	2005	2006	2007
38	45,000	46,000	47,000	49,000	51,000	52,000	54,000	57,000
38.1	48,000	48,000	48,000	51,900	53,000	55,000	55,000	55,000

Because the maximum wage rate is gross earnings, no worker receives cash compensation equivalent to the maximum wage rate. On the current maximum wage rate of \$55,000 per year for injuries after September 1, 1985, the maximum annual cash compensation an injured worker will receive is \$35,386.56.

The maximum wage rate limits compensation for both existing injured workers and their dependents and for future injured workers and their dependents. For disabled workers receiving long term earnings replacement, the maximum wage rate limits the extent to which their benefits can rise with the cost of living.⁴²

Increases in the maximum wage rate benefit both workers who have not yet had to make a claim and workers receiving compensation based on a maximum wage rate lower than their earnings at the time of their injury.⁴³

⁴¹ Saskatchewan Workers' Compensation Board, "Compensation Rate, Maximum, 2007 - S. 38", *Policy Manual*, POL 09/2007.

⁴² Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, s. 2(d.1), Consumer Price Index.

⁴³ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, s. 49(1), and Saskatchewan Workers' Compensation Board, *Policy Manual*, POL 02/2003.

Cash compensation is less than 90% of net earnings for high earning workers. The more they earned before the injury, the lower the percentage they receive. Often these are workers with higher education, skills and drive.

For higher income households, with high mortgages and expenses, the financial and social impacts and consequences of prolonged disability can be more devastating than for lower income households. Lenders in today's economy are quick to foreclose when payments are missed.

*Fig. 6: Percentage of Loss of Earnings
Compensated for Higher Earning Workers*

Gross Earnings	\$55,000	\$58,000	\$61,000	\$64,000	\$67,000	\$69,000
Income tax	13,041.60	14,133.60	15,225.60	16,317.60	17,191.20	18,064.80
- federal	7,891.00	8,577.40	9,263.80	9,950.20	10,498.80	11,047.40
- provincial	5,150.60	5,556.20	5,961.80	6,367.40	6,692.40	7,017.40
CPP contributions	1,910.70	1,910.70	1,910.70	1,910.70	1,910.70	1,910.70
EI premiums	729.30	729.30	729.30	729.30	729.30	729.30
Total deductions	15,681.60	16,773.60	17,865.60	18,957.60	19,831.20	20,704.80
"Earnings"	39,318.40	41,226.40	43,134.40	45,042.40	47,168.80	48,295.20
90% of "earnings"	35,386.56	37,103.76	38,820.96	40,538.16	42,451.92	43,465.68
Cash compensation	35,386.56	35,386.56	35,386.56	35,386.56	35,386.56	35,386.56
Percentage of loss	90.00%	85.83%	82.04%	78.56%	75.02%	73.27%

Every year, high earning workers are injured and receive cash compensation benefits. The 2005 profile of the distribution of time loss claims by earnings is typical of previous years.

Each year the accumulative percentile moves to a higher amount of earnings. In 2005, 90% of the workers with accepted time loss claims earned \$55,000 or less or 10% earned more than the maximum wage rate. If the maximum wage rate does not increase, a higher percentage of workers with accepted time loss claims will earn more than \$55,000 in 2006 and each succeeding year.

Had the maximum wage rate not increased from \$48,000, in 2005 over 15%, rather than 10%, of the workers with accepted time loss claims would have earned more than the maximum wage rate and received cash compensation less than 90% of their loss of earnings.

Fig. 7: Accumulative % Time Loss Claims by Injured Worker Salary (2001-2005)

Salary Range (\$)	2001 Acc %	2002 Acc %	2003 Acc %	2004 Acc %	2005 Acc %
00,000.01 - 10,000	5.496	5.045	4.447	4.393	4.25
10,000.01 - 20,000	29.279	27.566	25.142	23.634	23.16
20,000.01 - 21,000	32.602	30.642	28.203	26.625	26.38
21,000.01 - 22,000	35.299	33.362	30.714	29.055	28.82
22,000.01 - 23,000	38.541	36.438	33.692	31.557	31.67
23,000.01 - 24,000	41.592	38.776	35.868	33.851	33.62
24,000.01 - 25,000	45.154	41.641	38.798	36.856	36.60
25,000.01 - 26,000	48.185	45.027	41.639	39.193	38.79
26,000.01 - 27,000	51.270	48.037	44.589	41.609	41.06
27,000.01 - 28,000	54.798	51.508	48.061	45.053	44.17
28,000.01 - 29,000	58.013	54.953	51.314	47.764	46.60
29,000.01 - 30,000	60.805	58.201	54.978	51.007	49.59
30,000.01 - 31,000	63.339	60.822	58.053	54.156	52.38
31,000.01 - 32,000	66.042	63.305	60.633	57.499	55.57
32,000.01 - 33,000	68.086	65.420	63.021	60.325	59.23
33,000.01 - 34,000	70.204	67.705	65.182	62.834	61.78
34,000.01 - 35,000	72.165	69.655	67.261	65.070	63.72
35,000.01 - 36,000	73.909	71.605	69.375	67.343	65.78
36,000.01 - 37,000	75.550	73.409	71.234	69.356	67.80
37,000.01 - 38,000	77.076	75.082	72.943	71.175	69.64
38,000.01 - 39,000	78.581	76.591	74.521	72.872	71.20
39,000.01 - 40,000	80.249	78.198	76.189	74.468	72.71
40,000.01 - 41,000	81.652	79.779	77.719	76.014	74.19
41,000.01 - 42,000	83.171	81.129	79.194	77.718	75.68
42,000.01 - 43,000	84.383	82.506	80.450	79.422	77.12
43,000.01 - 44,000	85.650	83.862	81.699	80.831	78.65
44,000.01 - 45,000	86.781	85.213	83.065	82.176	79.99
45,000.01 - 46,000	87.870	86.385	84.389	83.527	81.53
46,000.01 - 47,000	89.205	87.512	85.391	84.692	82.77
47,000.01 - 48,000	90.070	88.552	86.441	85.821	84.11
48,000.01 - 49,000	91.391	89.942	87.614	86.734	85.18
49,000.01 - 50,000	92.161	90.825	88.444	87.820	86.28
50,000.01 - 51,000	92.937	91.793	89.398	88.704	87.26
51,000.01 - 52,000	93.748	92.550	90.208	89.517	88.10
52,000.01 - 53,000	94.511	93.123	90.915	90.365	88.97
53,000.01 - 54,000	94.967	93.848	91.615	91.056	89.76
54,000.01 - 55,000	95.512	94.296	92.246	91.724	90.55
55,000.01 - 56,000	95.955	94.849	93.035	92.407	91.56
56,000.01 - 57,000	96.315	95.264	93.735	93.133	92.11

Salary Range (\$)	2001 Acc %	2002 Acc %	2003 Acc %	2004 Acc %	2005 Acc %
57,000.01 - 58,000	96.629	95.600	94.188	93.673	92.73
58,000.01 - 59,000	96.901	95.916	94.620	94.226	93.41
59,000.01 - 60,000	97.140	96.226	95.018	94.687	93.90
60,000.01 - 61,000	97.439	96.634	95.396	95.175	94.42
61,000.01 - 62,000	97.657	96.845	95.704	95.614	94.95
62,000.01 - 63,000	97.834	97.095	95.972	95.894	95.33
63,000.01 - 64,000	98.032	97.273	96.356	96.182	95.72
64,000.01 - 65,000	98.270	97.451	96.679	96.542	96.08
65,000.01 - 66,000	98.400	97.662	97.001	96.879	96.41
66,000.01 - 67,000	98.515	97.774	97.193	97.088	96.66
67,000.01 - 68,000	98.665	97.971	97.427	97.325	96.96
68,000.01 - 69,000	98.767	98.083	97.612	97.512	97.20
69,000.01 - 70,000	98.822	98.208	97.797	97.778	97.50
70,000.01 and over	100.000	100.000	100.000	100.000	100.00

Fig. 8: Time Loss Claims Experience by Injured Worker Salary (2005)



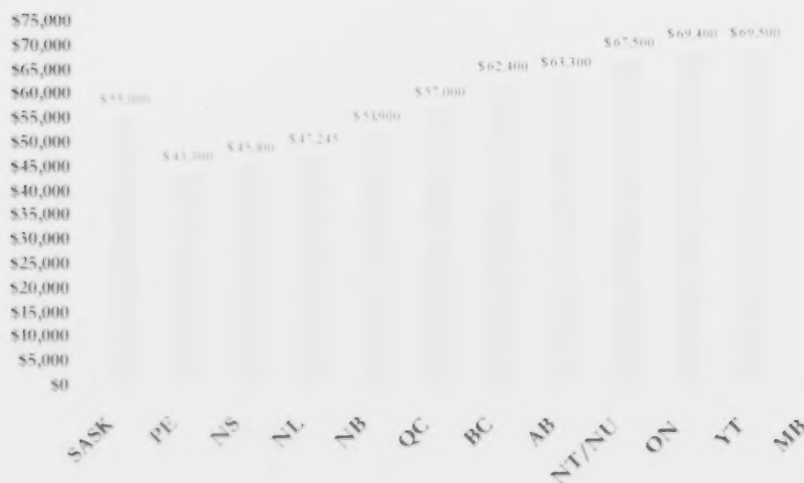
The maximum wage rate also limits the assessable payroll on which employers pay assessments. In some industries, the current maximum wage rate exceeds the wage rates of the industry and any increase in the maximum wage rate will not impact the assessable payroll or the assessments the employers pay.

When the maximum wage rate is fixed and static over time with no certain date for adjustment, the capitalization of the cost for an injury and the actuarial calculation for the injury fund's future liabilities do not account for any increase in the maximum wage rate. As a consequence, when the maximum wage rate is increased, as it has been and inevitably must be, the full future cost of compensation for each previous injury up to the new maximum for workers who earned more than the previous maximum has not been included in the future liabilities.

When there is an unscheduled increase in the maximum wage rate, the full increase in future benefit liability for previous injuries is immediately added to the future liabilities of the injury fund. This immediate increase in future benefit liability for each injured worker is attributed to the rate group in which the injured worker was employed at the time of the injury or illness.

The registered active employers at the time of the increase bear the cost in assessments for the increase in liability to pay increased compensation to workers injured while employed by past employers. This is not consistent with the principle that current employers pay for all current and future costs of current injuries.

Fig. 9: Jurisdictional Comparison - Canadian Maximum Wage Rates (2006)



In 1985, the maximum wage rate for injuries after September 1, 1985 was fixed at \$48,000. At the time, this maximum wage rate was the highest in Canada. It was 238.5% of the provincial average annual industrial wage rate.⁴⁴ Recently, Manitoba eliminated a maximum and now covers all earnings.⁴⁵

The Saskatchewan maximum wage rate for injuries that happened prior to 1985 is indexed at a level that reflects an amount earned by 90% of current injured workers. For these workers injured **before** September 1985, the cash compensation is 75% of gross wages with the maximum wage rate adjusted annually.⁴⁶ That maximum wage rate increased to \$54,000 in 2006.⁴⁷ The maximum weekly wage is \$1,038.46 and cash compensation calculated as 75% of gross wages is \$778.85 per week.

The maximum wage rate in 2006 for workers injured on and **after** September 1, 1985 is \$55,000. At their compensation rate of 90% of net earnings, the maximum wage rate would have to be just over \$66,000 for a single worker injured today to receive \$778.85 per week, the cash compensation for a single worker injured before September 1985 earning \$54,000. With the 2007 maximum wage rate for those injured before September 1, 1985 at \$57,000 the disparity is greater.

The minimum compensation payable is 50% the average provincial industrial wage as of June in the preceding year.⁴⁸ When there is a fixed maximum and an indexed minimum, the two converge over time and create compensation compression.

The 1996 Committee of Review recommended indexing the maximum wage rate for workers injured **after** September 1, 1985 at 185% of the provincial average annual industrial wage.⁴⁹ That was approximately the relationship between \$48,000 and the provincial average annual industrial wage six years earlier in 1990. Because there was no indexing, the maximum wage rate for injuries after 1985 had declined from 238.5% to 185% of the provincial average annual industrial wage between 1985 and 1990.

The recommendation of the 1996 Committee was not enacted. If it had been enacted, the maximum wage rate for 2006 would be \$66,776.27, instead of \$55,000, which was 159% of the 2005 provincial average annual industrial wage.

From 1985 to 2001, the maximum wage rate declined to 155% of the provincial average annual industrial wage and there was an urgent need to increase the

⁴⁴ In 1985 the average weekly wage rate, based on Statistics Canada data, was \$387.09. This a \$20,128.68 annual wage.

⁴⁵ Government of Manitoba, *The Workers' Compensation Amendment Act*, S.M. 2005, c. 17.

⁴⁶ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, ss. 68(1)(a).

⁴⁷ Saskatchewan Workers' Compensation Board, *Compensation Rate - Maximum, 2006 - Section 38, Policy Manual*, PCJL 03/2006.

⁴⁸ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, ss. 76(1).

⁴⁹ *Report of the Saskatchewan Workers' Compensation Act Committee of Review 1996*, p. 54.

maximum wage rate. The last Committee of Review recommended indexing the maximum wage rate to an amount equivalent to the earnings of 94% of injured workers. Instead, fixed amounts were legislated.

Fig. 10: Comparison - 2001 Recommended and Legislated Maximum Wage Rate

	Recommended	Legislated
2003	\$52,300	\$51,900
2004	\$55,600	\$53,000
2005	\$57,100	\$55,000
2006	\$58,200	\$55,000

A maximum wage rate of \$57,100 in 2005, as recommended, would have been 165% of the provincial average annual industrial wage. Instead, the maximum wage rate of \$55,000 in 2006 is 157.2% of the provincial average annual industrial wage.

Fig. 11: Maximum Wage Rate and Provincial Average Industrial Wage (1991-2006)

	Average Industrial Wage	Maximum Wage Rate	Maximum As % of Average	165%	175%	185%
1991	26,257.92	48,000.00	183	43,325.57	45,951.36	48,577.15
1992	26,607.88	48,000.00	180	43,903.00	46,563.79	49,224.58
1993	26,829.40	48,000.00	179	44,268.51	46,951.45	49,634.39
1994	27,617.72	48,000.00	174	45,569.24	48,331.01	51,092.78
1995	27,682.20	48,000.00	173	45,675.63	48,443.85	51,212.07
1996	27,855.36	48,000.00	172	45,961.34	48,746.88	51,532.42
1997	29,391.96	48,000.00	163	48,496.73	51,435.93	54,375.13
1998	29,644.16	48,000.00	162	48,912.86	51,877.28	54,841.70
1999	30,520.88	48,000.00	157	50,359.45	53,411.54	56,463.63
2000	30,520.88	48,000.00	157	50,359.45	53,411.54	56,463.63
2001	31,075.72	48,000.00	155	51,274.94	54,382.51	57,490.08
2002	31,715.32	48,000.00	151	52,330.28	55,501.81	58,673.18
2003	33,095.92	51,900.00	157	54,608.27	57,917.86	61,227.45
2004	32,878.04	53,000.00	161	54,248.77	57,536.57	60,824.37
2005	34,576.19	55,000.00	159	57,050.71	60,508.33	63,965.95
2006*	34,991.32	55,000.00	157	59,557.21	63,166.74	66,776.27

* projected

Some ask for a comparison of 90% of the net earnings at the provincial average annual industrial wage and 90% of the net earnings at the maximum wage rate to compare the probable take home pay of a worker earning each.

Since 1990, this comparison has tracked the same percentage relationship as the maximum wage rate to the provincial average annual industrial wage, but with

more variation because of the influence of external factors -- federal and provincial income tax rates, Employment Insurance premiums, Canada Pension Plan contributions and minimum wage rates.

Like the gross wage comparison, the trend was steeply downward until the increase in the maximum wage rate in 2003. Without another or regular annual adjustments, the trend has resumed in 2006.

Fig. 12: 90% Net Maximum Wage Rate as % of 90% Net Average Wage (1990-2006)



Because of the fifteen year delay in adjusting the maximum wage rate, the immediate future liability impact in 2003 to increase the maximum from \$48,000 to \$55,000 over three years for all workers and spouses receiving compensation was significant.

In 2002, the immediate increase to the future liability was estimated by the Board's actuary to be \$31.2 million. The cost shock was exacerbated by coinciding with a dramatic decrease in investment revenue as markets retreated. A Board costing in 2006, requested by this Committee, with the benefit of the actual experience since 2002, concluded the increase was \$43.9 million.⁵⁰

⁵⁰ Saskatchewan Workers' Compensation Act Committee of Review 2006, *Actuarial Valuation of 2003 Legislated Benefit Improvements*, http://www.labour.gov.sk.ca/cor/resources/Actuarial_Valuation_2004-202002-20Amendments.pdf (December 19, 2006).

Saskatchewan is the only Canadian jurisdiction that does not have a mandatory annual adjustment to the maximum wage rate.⁵¹ The Alberta rate is indexed to the Alberta CPI and is likely to increase dramatically in the coming years. It has increased from \$48,600 in 2000 to \$63,300 for 2006. The Ontario rate is indexed at 175% of the average provincial annual industrial wage. It increased from \$59,300 in 2000 to \$69,400 for 2006. Manitoba increased from \$52,720 in 2000 to no maximum in 2006. The indexing formulae in British Columbia and Quebec are more complex. British Columbia increased from \$58,000 in 2000 to \$62,400 in 2006. Quebec increased from \$50,500 in 2000 to \$57,000 in 2006.

There are sound public policy, funding and financial reasons to adopt an annual adjustment of the maximum wage rate. An annual adjustment:

- protects injured workers and surviving spouses and dependants from the dire financial consequences of inflation, even slow creeping inflation often minimized by active earners in the economy;
- enables the Board to plan and factor increases into its annual rate setting;
- places all the foreseeable costs for current injuries and illness on current production costs;
- annually expands the assessable payroll and thereby minimizes pressure to increase assessment rates as medical and other costs continue to increase; and
- avoids a build-up of liability and cost shock, similar to what happened in 2003, when unscheduled adjustments are made.

The current maximum wage rate is not scheduled to be adjusted. If it is not increased, it is readily apparent there will be hardship for injured workers and cost shock for employers when it is eventually increased, as it will and must be.

With the full cooperation of the Board and confidence in the projected costing by its current actuaries, the Committee has examined several options for a staged, balanced and rational approach to moving from a fixed and static maximum wage rate to a maximum wage rate that is indexed and adjusted annually.

⁵¹ Association of Workers' Compensation Boards of Canada, *Maximum Earnings Covered and Methods of Adjustment - Summary - 2006*.

Recommendations:

Amend section 38.1 to set the maximum wage rate applicable on and after January 1, 2008 at \$59,000 per year.

Amend section 38.1 so that commencing on and after January 1, 2009 the maximum wage rate applicable is not less than 165% of the "average annual wage" rounded to the nearest \$100 as of June in 2008 or the subsequent June each year immediately preceding January 1.

The Act does not define "average annual wage." It defines "average weekly wage"⁵² and indexes the minimum compensation payable to "not less than one-half of the average weekly wage as of June in the year immediately preceding."⁵³ Using the same process as the Board has used since 1983 to determine the average weekly wage as of January 1 each year, the Board will determine the average annual wage.

Based on current actuarial valuations for the years 2007 to 2012 and assuming no increase in the maximum assessable wage rate of \$55,000 and wage increases of 4.5% or 1% above an assumed annual CPI increase of 3.5%, which are the assumptions in the Board's most recent actuarial valuation⁵⁴, it is estimated the total assessable payroll will increase from \$12 billion in 2007 to \$13.5 billion in 2012. It is estimated indexing the maximum wage rate as recommended will increase the assessable payroll to \$15.4 billion in 2012.

⁵² Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W 17.1, ss. 2(a).

⁵³ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W 17.1, ss. 76(2).

⁵⁴ Hewitt Associates, *Actuarial Valuation at December 31, 2003, Saskatchewan Workers' Compensation Board*, May 2006.

Fig. 13: Assessable Payroll Projection (\$billions) (2001-2012)



Maintaining the current average assessment rate of \$1.84 per \$100 of assessable payroll,⁵⁵ projected assessment revenue will increase, without an increase in the maximum wage rate, because the assessable payroll will increase. However, the amount the assessment revenue increases will not match the expected increase in health care and other costs.

Income and costs can be balanced by the Board decreasing the amount that it sets aside each year to replenish the injury fund impacted by the last cost shock. Less attractive alternatives are to hope for windfall investment revenue, reduce expenses and benefits and increase assessments rates.

With no increase in the maximum wage rate **and** no increase in the current average assessment rate of \$1.84 the actuarial projection is that there will be a total of \$73 million to allocate to fund recovery for the years 2007 to 2012, inclusive. With the recommended increase in the maximum wage rate **and** no increase in the current average assessment rate of \$1.84, the estimated allocation to fund recovery for the years 2007 to 2012, inclusive, is \$102.2 million or \$29.2 million more.

⁵⁵ Saskatchewan Workers' Compensation Board, News Releases, http://www.wcb.sask.ca/WCBPortal/appmanager/WCBPortal/WCB2_rtfph?trac&newsSourceId=115071&_pageLabel=page_press_room_news (December 19, 2006).

Year	1929	1928	1927	1926	1925	1924
Total	128	143	136	108	102	105
Male	84	91	88	71	68	74
Female	44	52	48	37	34	31
Under 15	12	11	10	10	11	11
15 to 64	52	59	58	41	37	43
65 and over	20	23	20	20	19	17

Source: U. S. Census Bureau, Bureau of the Census, Washington, D. C.

Year	1929	1928	1927	1926	1925	1924
Total	128	143	136	108	102	105
Male	84	91	88	71	68	74
Female	44	52	48	37	34	31
Under 15	12	11	10	10	11	11
15 to 64	52	59	58	41	37	43
65 and over	20	23	20	20	19	17

Source: U. S. Census Bureau, Bureau of the Census, Washington, D. C.

Fig. 14: Status Quo - Revenue & Costs at \$1.84 Average Rate (2007-2012)

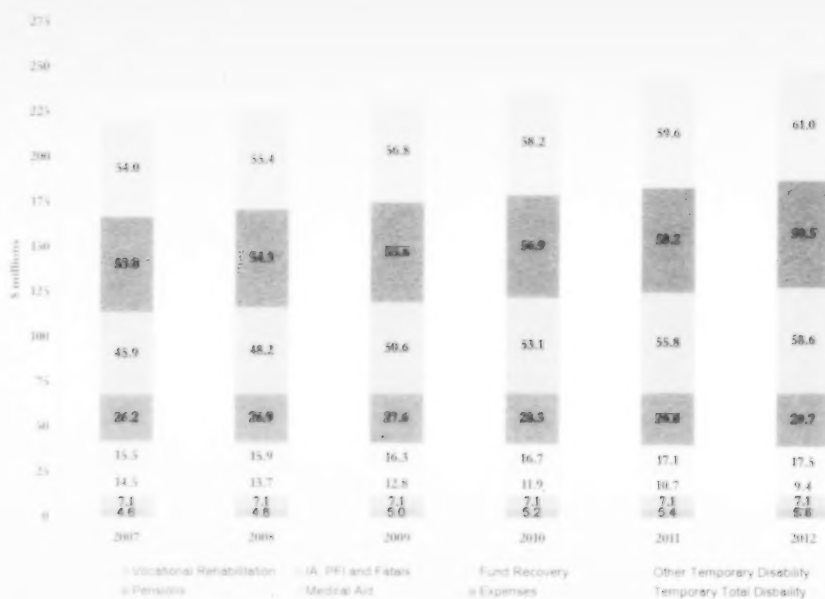
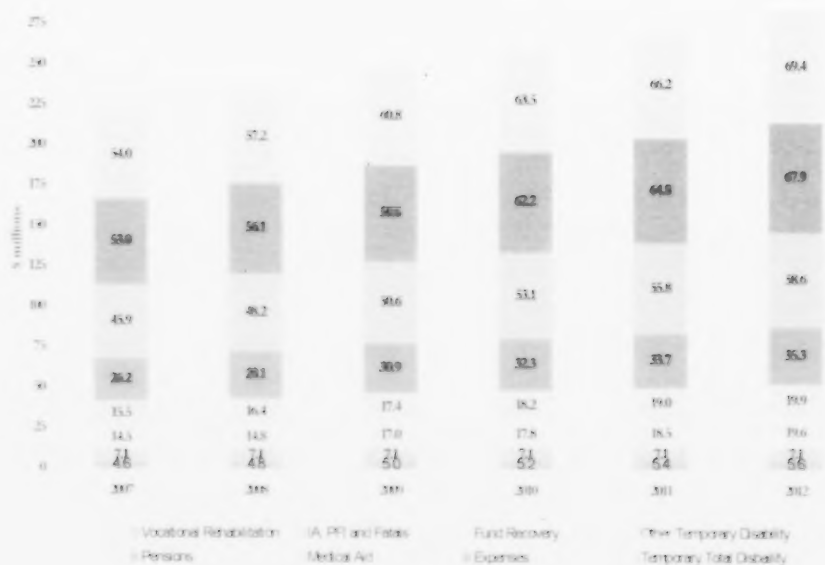


Fig. 15: Recommendation - Revenue & Costs at \$1.84 Average Rate (2007-2012)



Assuming a 4.5% increase in the provincial average annual industrial wage for the years 2006 to 2012, the provincial average annual industrial wage and recommended maximum wage rate from 2006 to 2012 will be as follows:⁵⁶

Fig. 16: Recommendation - Maximum Wage Rate (2007-2012)

	June Average Wage	Maximum Wage Rate in January
2006	35,268 (June)	55,000
2007	36,053	55,000
2008	37,675	59,000
2009	39,370	65,000
2010	41,142	67,900
2011	42,993	70,900
2012	44,928	74,100

It is necessary to have the increase in 2009 to place the maximum under section 38.1 above the indexed maximum in section 38 to maintain some semblance of parity in the compensation for workers injured before September 1, 1985 and those injured on and after that date.

There are 1,839 workers injured since September 1, 1985 receiving long term earnings replacement cash compensation. Of these, 190 have pre-disability earnings above the current maximum wage rate of \$55,000. Their future pension benefit liability is calculated as a percentage of their pre-disability earnings indexed for the cost of living each year, but limited by the maximum wage rate, less their earning capacity, which is projected to increase and is not subject to a maximum limit. For individuals with pre-disability earnings at or above the maximum, their pre-disability earnings are frozen, but their earning capacity is projected to increase each year, resulting in decreased benefits. Indexing the maximum wage rate to the average provincial annual industrial wage will allow pre-disability earnings above the current wage rate to increase with the average provincial annual industrial wage as the maximum wage rate increases.

The Committee's recommendation has a cost in an immediate increase in future liabilities because the maximum wage rate is being indexed. The amount is driven by the fact of indexing. It is not driven by the percentage of the average provincial annual industrial wage.

The estimate of the immediate increase in future liabilities that will accompany enactment of the recommendation is approximately \$64 million. Indexing at 170% or 175% of the average provincial annual industrial wage creates slightly higher immediate future liabilities of approximately \$66 and \$67 million, respectively, but faster increases in assessable payroll and higher overall assessment payments.

⁵⁶ Hewitt Associates, Saskatchewan Workers' Compensation Board - Committee of Review Considerations Impact of Changes to Maximum Wage.

Fig. 17: Maximum Assessable Wage Rate – Old and New Act (1996-2007)

Maximum Assessable Wages	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Maximum Assessable Wage Old Act (Pre-1985) Policy Manual	42,000	43,000	43,000	44,000	45,000	46,000	47,000	49,000	51,000	52,000	54,000	57,000
Maximum Assessable Wage New Act (Post-1985) Legislation	48,000	48,000	48,000	48,000	48,000	48,000	48,000	51,000	53,000	55,000	55,000	55,000
Average Provincial Weekly Wage (2005-2007 projected)	565.23	570.08	586.94	586.94	597.61	597.61	609.91	636.46	632.27	664.93	678.23	693.33
Average Provincial Annual Wage	29,391.96	29,644.16	30,520.88	30,520.88	31,075.72	31,075.72	31,715.32	33,095.92	32,878.04	34,576.19	35,268.00	36,053.00
Maximum (Old Act) Assessable Wage as % of Average	146.30%	145.05%	144.16%	147.44%	148.03%	148.03%	148.19%	148.05%	155.12%	150.39%	153.11%	158.10%
Maximum (New Act) Assessable Wage as % of Average	163.31%	161.92%	157.27%	157.27%	154.46%	154.46%	151.35%	156.82%	161.20%	159.07%	155.94%	152.55%

2.04 No-Fault Eligibility for Compensation and Statutory Presumptions

A worker in an industry covered by the workers' compensation program who suffers an injury is entitled to compensation.⁵⁷ The principle of no-fault compensation is embodied in the declaration of entitlement and the definition of "injury", which means:

- (i) the results of a wilful and intentional act, not being the act of the worker;
- (ii) the results of a chance event occasioned by a physical or natural cause;
- (iii) a disabling or potentially disabling condition caused by an occupational disease; or
- (iii) any disablement, arising out of and in the course of employment;⁵⁸

The merits of a claim for compensation are determined through independent inquiry by the Board, not adjudication of competing adversarial positions advanced by workers and employers as happens in fault-based litigation in the courts.

The inquiry method is intended to be faster and more cost effective than the approach of having others share and question information they each present to an independent and impartial third person. Under the inquiry method, the Board is responsible to gather all the information and make decisions after weighing and evaluating the information.

The person responsible for making a decision for the Board must not start with a presumption in favour of or against the worker making a claim. The decision-maker's determination whether an injury is to be accepted as one arising out of and in the course of employment is to be based on unbiased investigation, relevant information and reasonable inferences to be drawn from the information.

It is common in the administration of our law to employ presumptions to make factual findings and legal conclusions. For example, a person charged with an offence has the right to be presumed innocent until proven guilty in a fair and public hearing by an independent and impartial tribunal. Another presumption is that when two persons die in the same accident, the younger person is presumed to have survived the older person.

Presumptions are used to make a conclusion of fact based on another fact proven to be true. Sometimes, this is expressed as something being deemed if a

⁵⁷ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, s. 28.

⁵⁸ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, ss. 2(k).

fact is proven. Presumptions are used to direct what is to be concluded from certain facts that have been established or conclusions arrived at or to direct the probability, if not the certainty, of a relation between the facts and the inference to be drawn from the facts.

By deliberate choice, some presumptions are rebuttable and others are not. A rebuttable presumption requires something positive to reach an opposite conclusion. An opinion there is nothing to support what is to be presumed does not rebut the presumption. If this happens, the presumption is reversed. To rebut the presumption there must be affirmative evidence to the contrary. This is why statutory presumptions that are rebuttable usually include the phrase "unless the contrary is shown" or "unless the contrary is proven."

It is common in workers' compensation programs for determinations on entitlement to compensation to be aided by statutory presumptions that facilitate administration, ensure consistency and advance the no-fault character of entitlement.

2.04.1 Presumption "Arises Out Of" and "In the Course Of" Employment - S. 29

There are prerequisites to the acceptance of a reported claim for compensation. The person must be a worker employed in an industry covered by the statute and he or she must have suffered an injury. Regardless of the seriousness of the injury, if the person is not a worker employed in an industry covered by the statute he or she is not entitled.

For a person to be entitled to compensation, the injury must be one "arising out of and in the course of employment." It must both "arise out of" and have happened "in the course of" employment.

The Board must determine whether the injury arises out of the worker's employment or in the course of the worker's employment. In making this determination, the Board is directed in section 25(2) to give the benefit of the doubt to the worker: "Where the evidence in support of the opposite sides of an issue is approximately equal, the board shall resolve the issue in favour of the worker."

"... the Workers' Compensation Act should be interpreted liberally so as to provide compensation for work related injuries to as many as can reasonably be seen to fall within its purview."

Chief Justice Mitchell (P.E.I. 1983)

"... the Board is a public authority established to assist as many people as it can within the bounds of its constituent statute. The corollary is that the Board should not go out of its way to reject a claim. The success of whether the Board is fulfilling the reason for its existence is not measured or reflected in the number of claims it rejects. Where a worker or his or her dependant encounters difficulty in establishing a claim, the Board should recognize the difficulty and do what it can within its legal bounds to assist in ameliorating that difficulty."

Chief Justice Bayda (Sask. 1998)

Section 29 states that when an injury to a worker "arises out of his employment, it is presumed that it occurred in the course of his employment" and vice-versa. This is not stated as a rebuttable presumption.

The 1992 Committee of Review observed: "...the Committee would like to stress that the onus is on the Board to prove the contrary and that in dealing with this section the Board must keep in

mind that the benefit of the doubt must be given to the injured worker."⁵⁹ The Board has a policy directing the basis on which decisions are to be made.⁶⁰

The presumption in section 29 does not compel the acceptance of a claim because the injury happened at a certain time or place, while engaged in a certain activity or is a certain disease. The Board has some specific policies to guide decision making in exceptional situations – responding to an emergency; recreational activities in remote camps; travelling for medical aid and in return-to-work programs; and entering and leaving employer premises.⁶¹

The presumption in section 29 assists in ensuring the no-fault basis for compensation is not defeated by too narrow an approach to deciding whether an injury is employment related.

A determination must be made on each claim that the injury is either one "arising out of" or "in the course of" employment. If it is determined to be either, then it is presumed to be both. With the presumption, there is no room to decide that although it is one it is not the other and, therefore, because it is not both the claim is disallowed.

The Board acknowledges this in a policy adopted in 2001, which states, in part:⁶²

⁵⁹ *Report of the Workers' Compensation Act Review Committee, August 1992*, p. 24.

⁶⁰ Saskatchewan Workers' Compensation Board, "Benefit of Doubt, Application", *Policy Manual*, POL 04/1999.

⁶¹ Saskatchewan Workers' Compensation Board, "Injuries, Responding to Emergency", "Injuries, Recreational Activities in Remote Camps", "Injuries, Travelling for Medical Aid", "Injuries, Travelling in Return to Work Programming", "Injuries, Entering or Exiting Employer Premises", *Policy Manual*, POL 28/77, POL 29/82, POL 45/87, POL 12/90, POL 17/91.

⁶² Saskatchewan Workers' Compensation Board, "Arising Out Of And In The Course Of Employment", *Policy Manual*, POL 13/2001.

1. The Board interprets the statutory phrase "arises out of employment" to mean that the injury must be related to some hazard which results from the nature, conditions or obligations of employment. It must be linked to, originate from, or be the result of, in whole or in part, an activity or action undertaken for employment.
 - a. Examples of employment hazards that may directly "arise out of employment" that relate to an industry or occupation include a cut from machinery, inhaling chemicals or worksite ergonomics.
 - b. An employment hazard may also be indirectly related to the industry or occupation. Some examples would include safe access and egress to employment, reasonable use of employer premises (such as lunchroom or washroom facilities), and work-related travel.
 - c. Risks or conditions which are personal to the worker (e.g.: medical conditions such as epilepsy or diabetes, personal activities such as completing a personal errand during work hours or personal relationships) are not hazards of employment unless it can be demonstrated that employment factors directly contribute to the occurrence of an injury.
2. The Board interprets the statutory phrase "in the course of employment" to mean that the injury must happen at a time and place, and, in circumstances consistent with and reasonably incidental to employment. It is the direct result of an activity, action, procedure or conduct undertaken related to employment.
 - a. Time and place are not strictly limited to the normal hours of work or the employer's premises. However, there must be a relationship between employment and the time and place of the injury.
 - b. The injury may be incidental to the job (e.g.: weather conditions such as lightning strike or insect bite).
3. When an injury occurs and when one condition of compensability is met, the other is presumed to also have been met.

The presumption in section 29 is unlike presuming that if certain circumstances exist then the injury or illness is presumptively employment related or compensable. This is the approach in section 30 when a worker is found dead at a place where the worker had the right to be in the course of his or her employment and the approach in section 29.1 in the case of certain occupational diseases and persons employed as fire fighters.

The presumption that an injury arising out of employment also occurred in the course of employment and vice-versa has not compelled the Board to accept claims that are not employment related. However, the Board is nervous that a court will somehow treat the presumption in section 29 as irrebuttable, as the Court of Appeal did with section 30 in 1999.⁶³

⁶³ *Henry v. Newfoundland (Workers' Compensation Board)* [1999] S.J. No. 114 (Q.L.).

The Board proposes that section 29 be amended to add the phrase "unless the contrary is shown" and to add a new subsection making the amendment both retrospective and retroactive. A similar Board proposal made to the Committee in 2001 was not addressed by that Committee.

The presumption in section 29 does not direct when an injury or disease is to be presumed to be compensable, as are the presumptions in sections 30 and 29.1. The presumption in section 29 prevents conclusions that an injury that arises out of employment is not one that occurred in the course of employment and vice versa. It is an extension of the no-fault principle and benefit of the doubt to be given to the worker.

The Committee has concluded that the administration of section 29 has not created a problem that requires a solution. The proposed amendment is directed to a "possible" judicial interpretation. However, an amendment would create the basis for the Board to change its current administration. Because new words would have to be given some meaning, they might compel a change. A clear possible outcome would be to erode the benefit of the doubt that is to be given to injured workers. Consequently, the Committee believes section 29 should remain as it is.

Recommendation:

Section 29 is not to be amended as proposed by the Board or otherwise.

2.04.2 Presumption When Worker Found Dead at Work - S. 30

Each year there are deaths as a result of employment injuries, including occupational diseases. Some follow long latency periods or prolonged illness. Some follow traumatic events, such as traffic accidents or exposure to noxious or allergenic substances.

Fig. 18: Accepted Fatality Claims (1990-2005)



Some deaths happen at work without obvious causes. Prior to 1979, section 30 of the Act stated: "Where a worker is found dead at a place where he had a right to be in the course of his employment, it is presumed that his death was the result of injury arising out of and in the course of his employment, unless there is evidence sufficient to rebut the presumption."

The 1978 Committee of Review observed that:

The present legislation is based on a presumption that if a worker's death occurs at his workplace, it shall be presumed that the death occurred because of work. Some concern was registered over this section of the Act. It is the committee's belief that this concern is based on a misunderstanding of the term "presumption". This term is based on the expectation that there will be a complete and thorough investigation. As such, if there is no evidence to show the cause of death, then it is assumed that he died in the course of his employment. If the evidence shows that the death is not work-related, then the claim is not accepted.⁵³

The underlined words in section 30 were deleted as unnecessary in 1979 and, the Board continued to interpret the section in a manner that allowed the presumption to be rebutted.

The 1992 Committee of Review received an opinion from the Civil Law Division of the Department of Justice that the Board was correct in taking the position

⁵³ Report of the Workers' Compensation Act Review Committee, December 1978, p. 51.

that the presumption in section 30 could be rebutted. The Committee concurred with that opinion.⁶⁵

In 1999, the Saskatchewan Court of Appeal decided the presumption could not be rebutted.⁶⁶ The Board adopted a policy reflecting the irrebuttable presumption interpretation of the Court of Appeal.⁶⁷

The 2001 Committee decided an irrebuttable presumption was too inflexible an approach to the circumstances of a worker being found dead at work. The death might be caused by purely natural internal workings of the body and the place of employment is an irrelevant coincidence to the death. The Committee recommended that the words "unless the contrary is shown" be added to the section. This was done in 2002 and the Board adopted a new policy.⁶⁸ Section 30 now states:

Where a worker is found dead at a place where the worker had a right to be in the course of his employment, it is presumed that the worker's death was the result of injury arising out of and in the course of his employment, unless the contrary is shown.

From 1998 to 2001, the Board applied section 30 once. Since 2001, the Board applied section 30 fourteen times: 2002 (2); 2003 (1); 2004 (1); 2005 (7); Jan - Sept, 2006 (3). The increase is a consequence of persons learning about the 1999 court decision and applying to re-open disallowed claims for deaths that happened several years ago and making new claims for deaths prior to 2002.

In 1998, a teacher at the University of Saskatchewan became ill, was given cardiopulmonary resuscitation (CPR) and transported by ambulance to the hospital. The Emergency Medical Technicians in the ambulance were unable to resuscitate him and he was pronounced dead.

In 2001, his widow made a claim for dependant benefits for her and their daughter after learning she might be entitled to benefits. The claim was denied without mention of the delay in making the claim. She appealed. The Board held a hearing in 2002 attended by two Board members who disagreed and came to impasse in making a decision. A new hearing by the two members and the chair was held. A majority denied the claim because of delay beyond six-months in making the claim⁶⁹ and because the deceased was "not found dead at work." The dissenting member concluded section 30 applied and dependant benefits should be paid.

In June 2003, the Court of Queen's Bench found it was incorrect and patently unreasonable for the majority members of the Board to have applied an analysis

⁶⁵ *Report of the Workers' Compensation Act Review Committee August 1992*, p. 25.

⁶⁶ *Henry v. Saskatchewan (Workers' Compensation Board)* [1999] S.J. No. 114 (Q.L.).

⁶⁷ Saskatchewan Workers' Compensation Board, "Fatalities - Presumption", *Policy Manual*, POL 09/1999.

⁶⁸ Saskatchewan Workers' Compensation Board, "Fatalities - Presumption", *Policy Manual*, POL 10/2002.

⁶⁹ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, s. 45.

that embodied a rebuttable presumption and, through its conduct, the Board had waived its right to rely on delay to deny the claim.⁴⁰

The Board reports that approximately forty claims for fatality benefits were disallowed in the period from 1980 to 2002. Subsequently, six of the forty have been accepted. The average cost of a fatal claim is \$112,000. If the remaining thirty-four were to be reopened and accepted, the estimated cost will be \$3.9 million. It is not known whether there are any claims where no previous claim had been made and denied.

This potential liability has not been included in the fund's liabilities. Routinely, statistical outliers like large retroactive appeal decisions are excluded from the valuation. The liability arising from the 1999 Court decision was not included in the year-end liability valuation. It might be that there will have to be a contingent liability if further claims are made and payments are likely.

The Committee received submissions that on some of the claims made for dependant benefits in circumstances where the worker was found dead at work before the amendment in 2002, the Board is ignoring the irrebuttable interpretation of the Court and applying the 2002 amendment retrospectively to deny claims. The submission is that claims managers are applying the law and Board policy as it is now at the time the claim is being made and not the law and policy as it was at the time of the death. This should not happen unless the statute clearly says it is to apply retrospectively and is intended to take away rights dependants had under the Court decision before the 2002 amendment.

The Committee was told more applications are being made to the court to review decisions by the Board denying these claims and more claims will be made to the Board.

The Committee was asked to recommend reversal of the 2002 amendment to address the Board's "culture of denial" and to recommend an amendment to address the situation if a worker is found unconscious at work, transported to hospital and dies in the ambulance or in Emergency at the hospital.

The Board proposed the Committee recommend an amendment to section 30 to allow the Board to apply section 30 both retrospectively (in the future to impose new results on past events) and retroactively (to change the law at a time in the past) by proposing a new section 30(2) that states: "Subsection (1) applies to all decisions of the board made on or after the date that subsection (1) came into force regardless of the date on which the worker was found dead."

The Board assures it does not intend, and will not seek, to recover payments made since 1999, although the language of the proposal would apply to all new claims for deaths prior to 2002, intercept the current applications to the court and, arguably, reverse the successful 2003 application to the court.

⁴⁰ *Levitt v. Saskatchewan (Workers' Compensation Board)* [2003] S.J. No. 493 (Q.B.) (Q.L.).

The Committee thinks no more layers of confusion should be added. Section 30 is correctly worded and is not creating problems for the ongoing administration of the workers' compensation program for deaths after 2002. The Committee does not wish to intervene in these few current applications before the courts or claims before the Board related to deaths discovered at work before 2002.

Recommendation:

Section 30 is not to be amended as proposed by the Board or otherwise.

2.05 Definition: "Common Law Spouse"

Section 88 of the Act states:

- (1) Where a worker dies leaving no dependent spouse, the compensation to which a dependent spouse would have been entitled pursuant to this Act shall be paid to a dependent common law spouse where:
 - (a) the worker maintained the common law spouse for one year or more before the worker's death; or
 - (b) the worker maintained the common law spouse for less than one year, but the worker and the common law spouse were the birth parents or adoptive parents of a child.
- (2) Where a worker leaves a dependent common law spouse mentioned in subsection (1) and a spouse who is partially dependent, the board may provide compensation to both that common law spouse and that spouse as provided in section 90.
- (3) In this section "common law spouse" means a person who, although not legally married to the worker, lived and cohabited with the worker as the spouse of the worker and was known as such in the community in which they lived.

The Board proposes the Act be amended to recognize that an essential element of a common law relationship is continuous cohabitation. It proposes amending Section 88(1) to read as follows:

Where a worker dies leaving no dependent spouse, the compensation to which a dependent spouse would have been entitled pursuant to this Act shall be paid to a dependent common law spouse where:

- (a) the worker **cohabited with** ~~maintained~~ the common law spouse for one year or more **immediately preceding** ~~before~~ the worker's death; or
- (b) the worker **cohabited with** ~~maintained~~ the common law spouse for less than one year, but the worker and the common law spouse were the birth parents or adoptive parents of a child.

The *Canada Pension Plan*⁷¹, *Income Tax Act*⁷² and *The Family Property Act*⁷³ contain definitions of common law spouse that do not require a period of cohabitation immediately prior to death.

The Board explains the changed language “cohabitated with” and “immediately preceding” would make the language consistent with the legislation in other Canadian jurisdictions. The other Canadian workers’ compensation programs that have a definition similar to the one proposed by the Board are: Nova Scotia and the Yukon.

More importantly, the proposed amendment will defeat any argument that cohabitated for longer than one year many years ago creates an entitlement for a “former” common law spouse. The one case that gave rise to the Board’s concerns involved an incarcerated injured worker who it was alleged had been financially supporting the person claiming to be a dependent common law spouse and her children. On appeal, the Board members found that the worker’s absences from the home while in jail, attending training and partaking in severe drug abuse were not, in all of the circumstances, considered to bring an end to the common law relationship.⁷⁴

The Board’s proposal arising out of one situation with unusual circumstances where the facts were found to be in favour of the claim would impose an additional condition on all common law spouses separated from the deceased worker for any number of reasons. These could include the worker’s prolonged absence working in a remote location, a prolonged hospitalization or institutionalization of the spouse or worker due to physical or mental illness and any number of other situations that impose separation on spouses. The Committee has determined this is not a situation where the facts of one claim should be used to change the law for everyone.

Recommendation:

Section 88 is not to be amended as proposed by the Board or otherwise.

The Board also proposes the Act be amended so it has an easily accessible, consistent and common definition of “common law spouse” by moving the definition in section 88(3) unaltered to section 2, the interpretation section of the Act. The phrase “common law spouse” currently does not appear elsewhere than in section 88, but the Board proposes it apply to an amended section 97.

Section 97 authorizes the Board to pay an amount equivalent to three or twelve months cash compensation to a dependent spouse on the death of a worker entitled to compensation at the time the worker died. It does not authorize

⁷¹ Government of Canada, *Canada Pension Plan*, R.S., 1985, c. C-8, ss. 2(1).

⁷² Government of Canada, *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.), ss. 122.6.

⁷³ Government of Saskatchewan, *The Family Property Act*, c. F-6.3, ss. 2(1).

⁷⁴ Claim 1016 6706 23D.

payment in the same circumstances to a dependent common law spouse. Section 97 states:

- 97(1) On the death of a worker who was or would have been entitled to compensation under this Act at the time of death, the board shall, where no compensation is payable under sections 82 to 89, pay to the dependent spouse or, where the worker died leaving no dependent spouse, to his dependent children or any other persons recognized by the board as being dependent, in any share that the board may determine, an amount equal to the compensation the worker received or would have been entitled to receive, as the case may be, in respect of a period of three months.
- (2) Where a worker dies of a condition for which no benefits are payable pursuant to sections 82 to 89 and that worker received compensation for a prolonged period of time immediately prior to the day of his death, the board shall pay to his dependent spouse a monthly allowance, equal to the monthly amount of compensation that was being paid to the worker, for 12 months following the day of the death of the worker and, in addition the board may provide retraining services to assist the dependent spouse to enter the labour force.

The Board proposes amending Sections 97 to read as follows:

- 97(1) On the death of a worker who was or would have been entitled to compensation under this Act at the time of death, the board shall, where no compensation is payable under sections 82 to 89, pay to the dependent spouse or dependent common law spouse, where the worker died leaving no dependent spouse or dependent common law spouse, to his dependent children or any other persons recognized by the board as being dependent, in any share that the board may determine, an amount equal to the compensation the worker received or would have been entitled to receive, as the case may be, in respect of a period of three months.
- (2) Where a worker dies of a condition for which no benefits are payable pursuant to sections 82 to 89 and that worker received compensation for a prolonged period of time immediately prior to the day of his death, the board shall pay to his dependent spouse or dependent common law spouse a monthly allowance, equal to the monthly amount of compensation that was being paid to the worker, for 12 months following the day of the death of the worker and, in addition the board may provide retraining services to assist the dependent spouse or dependent common law spouse to enter the labour force.
- (3) In this section "common law spouse" means a person who, although not legally married to the worker, lived and cohabitated with the worker as spouse of the worker and was known as such in the community in which they lived.

The Committee accepts section 97 should be amended as proposed by the Board to treat common law spouses equivalent to married spouses. The Board did not identify the frequency of these circumstances and did not present this change as one that has a cost that is not quantifiable or material.

The Committee has no preference whether the definition of "common law spouse" should be repeated as section 97(3) or included in section 2 in place of both the existing section 88(3) and a new section 97(3).

Recommendation:

Amend section 97 to add the words "or dependent common law spouse" immediately following "dependent spouse" in both subsections (1) and (2). The term "common law spouse" is to have the same meaning as in the existing section 88(3).

2.06 Definition: "former Workers' Compensation Act"

Section 183 of the Act is a transition section enacted in 1980, which states:

Except as otherwise provided in this Act, the provisions of *The Workers' Compensation Act* are deemed to be in full force and effect insofar as they relate to injuries occurring prior to the coming into force of this Act.

It has been argued before the Board that persons injured prior to the coming into force of *The Workers' Compensation Act, 1979* are covered by *The Workers' Compensation Act, 1979* rather than the former Act. There are references to "any" or "a" "former Workers' Compensation Act" throughout the current Act, but no definition of "former Workers' Compensation Act". As a precaution, the Board proposes including a definition in section 183, which would read:

183(1) In this section:

- (a) "former Act" means a workers' compensation Act that was in force prior to the proclamation of *The Workers' Compensation Act, 1979*;
- (b) "1979 Act" means *The Workers' Compensation Act, 1979*, as amended from time to time, which was proclaimed on January 1, 1980;
- (2) Except as otherwise provided in the 1979 Act, the provisions of the former Act deemed to be in full force and effect insofar as they relate to injuries occurring prior to the coming into force of the 1979 Act.

²⁸ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, ss. 77(1), 77(1), 77(1).

²⁹ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, ss. 77(1), 77(1).

A clarifying definition will have application to the transitional section 183 and sections 77 and 77.01. A definition of this term should be included in section 2 so it has application throughout the Act.

Recommendation:

Amend the Act to clarify the meaning of "any former Workers' Compensation Act", "a former Workers' Compensation Act", "a former Act" and the meaning and intent of section 183.

2.07 Municipal "workers" Not "employees"

The Act applies to employers and "workers"¹, although employment relationships are between employers and "employees." The Act defines "worker":

"worker" means a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise, and includes:

- (i) a learner;
- (ii) a member of a municipal volunteer fire brigade;
- (iii) an executive officer of an employer, where that executive officer is carried on the pay-roll; and
- (iv) any other person not otherwise coming within this definition who, under this Act or under any direction or order of the board, is deemed to be a worker.

Section 5 is the only place in the Act where the term "employees" is used to mean persons covered by the Act. Section 5 states:

- 5(1) The reeve, councillors and secretary treasurer of a rural municipality are deemed to be employees of the municipality and this Act applies to any other employees of all rural municipalities that the board may, by order, designate.
- (2) The annual earnings of any reeve or councillor are deemed to be the amount that the Lieutenant Governor in Council may determine.
- (3) A full-time employee of a rural municipality is deemed to be working in the course of his employment where he is acting as an election official at a municipal election.

For the sake of consistent language, the Board proposes amending section 5 to use the term "workers" and "worker" in place of "employees" and "employee."

¹Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, ss. 2(i).

Recommendation:

Amend section 5(1) to substitute the word “workers” for “employees” and amend section 5(3) to substitute the word “worker” for “employee.”

3. PREVENTION AND FREQUENCY OF INJURY AND ILLNESS

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3.01 Preventing Predictable, Unintentional Workplace Injury and Illness

Predictable, unintentional injury and illness happens in all activities and places - work, recreation, daily life activities, home, school yards, farms, highways and all places of employment. At worksites, preventable, unintentional injuries and illness are an unwanted, and mostly preventable, side-effect of economic activity.

Insurers paying benefits for unintentional injury and illness, wherever and whenever they occur, recognize the human and financial benefits of integrating their insurance with programs for prevention of injury and illness in the first place and quick, safe restoration to health and wellness.

Occupational health and safety practice, policy and law take several approaches to prevent predictable, unintentional workplace injury and illness, including:

- support for industry prevention and safety associations;
- workplace hazardous material information (WHMIS);
- safety awareness, education and training;
- workplace internal responsibility systems empowering workers through knowledge, rights and joint health and safety committees;
- standards and practice setting and enforcement through inspection and penalties; and
- financial incentives rewarding and punishing employers.

Intentional infliction of injury at work, a frequent occurrence in occupations such as health care, social work, corrections, public transportation, hospitality, late night retail and policing, requires strategies to identify, assess and manage predictable violence.

3.02 Workers' Compensation Board and Government Responsibilities

Nothing is more important in any workers' compensation scheme than the prevention of accidents.

1928 Royal Commission

The 1928 Royal Commission concluded an employer collective liability system, properly used, was well suited to accident prevention through a single agency with accident data for analysis, inspection, financial rewards and

punishment, education campaigns and practical advice and support. The Commission favoured assigning exclusive agency authority over workplace accident prevention to the Workers' Compensation Board because: "A divided authority will not produce the best results."⁷⁸

The Royal Commission recommended: "That adequate provision be made in the Act for an effective system of accident prevention based on the representation and co-operation of both employers and employees, such system to be under the jurisdiction of the Board."⁷⁹

⁷⁸ Saskatchewan Workers' Compensation Board, *The Story of Workers' Compensation in Saskatchewan*, 1997, p. 140.

⁷⁹ Saskatchewan Workers' Compensation Board, *The Story of Workers' Compensation in Saskatchewan*, 1997, p. 150.

The Legislative Assembly took that approach in 1929. It was decades later that legislators adopted the current arrangement of a shared jurisdiction by the Board and the Department of Labour. The original 1929 Workers' Compensation Act stated:

- 114(1) The Board shall have power:
- (a) to investigate from time to time employments and places of employment within the province, and determine what suitable safety devices or other reasonable means or requirements for the prevention of accidents shall be adopted or followed in any or all employments or places of employment;
 - (b) to determine what suitable devices or other reasonable means or requirements for the prevention of industrial diseases shall be adopted or followed in any or all employments or places of employment;
 - (c) to make rules and regulations, whether of general or special application and which may apply to both employers and workmen, for the prevention of accidents and the prevention of industrial diseases in employments or places of employment;
 - (d) to establish and maintain museums in which shall be exhibited safety devices, safeguards, and other means and methods for the protection of the life, health, and safety of workmen, and to publish and distribute bulletins on any phase of the subject of accident-prevention;
 - (e) to cause lectures to be delivered, illustrated by stereopticon or other views, diagrams, or pictures, for the information of employers and their workmen and the general public in regard to the causes and prevention of industrial accidents, industrial diseases, and related subjects;
 - (f) to appoint advisory committees, on which employers and workmen shall be represented, to assist the board in establishing reasonable standards of safety in employments and recommend rules and regulations.
- (2) Before the adoption of any such rule or regulation the board may hold a conference with a committee of not more than five employers representative of the industries that would be affected by the rule or regulation and a committee of an equal number of workmen engaged in the said industries, to consider the advisability of adopting such rule or regulation.
- (3) The board and any member of it, and any officer or person authorised by it for that purpose, shall have the right at all reasonable hours to enter into the establishment of any employer who is liable to contribute to the accident fund and the premises connected with it, and every part of them, for the purpose of ascertaining whether the ways, works, machinery, or appliances therein are safe, adequate, and sufficient, and

whether all proper precautions are taken for the prevention of accidents to the workmen employed in or about the establishment or premises and whether the safety appliances or safeguards prescribed by law are used and employed therein, or for any other purpose which the board may deem necessary, including the purpose of determining the proportion in which such employer should contribute to the accident fund.

- (4) Every person who obstructs or interferes with any commissioner, officer, or person in the exercise of the rights conferred by subsection (3) shall incur a penalty not exceeding \$500.
- 115(1) Where in any employment or place of employment safety devices or appliances are in the opinion of the board necessary for the prevention of accidents or of industrial diseases, the board may order the installation or adoption of such devices and appliances, and may fix a reasonable time within which they shall give notice thereof to the employer.
- (2) Where safety devices or appliances are, by order of the board under this section, required to be installed or adopted, or are prescribed by the regulations, and the employer fails, neglects, or refuses to install and adopt such safety devices or appliances in any employment or place of employment in accordance with the terms of the order or regulations and to the satisfaction of the board, or where under the circumstances the board is of the opinion that conditions of immediate danger exist in any employment or place of employment which would otherwise be likely to result in loss of life or serious injury to the workmen employed therein, the board may, in its discretion, order the employer to forthwith close down the whole or any part of such employment or place of employment and the industry carried on therein and the board shall notify the employer of such order.
- (3) Every employer who fails, neglects, or refuses to comply with any order made by the board under subsection (2) shall incur a penalty not exceeding \$500, and each day's continuance of any such failure, neglect or refusal to comply shall constitute a new and distinct offence.

In 1930, the Board required employers to have first aid kits. Accident prevention associations were formed in 1931. In the next decade, the Board engaged in education and public awareness and encouraged employers to establish their own prevention associations. Board safety officers delivered training courses and punitive surcharges were assessed against employers breaching safety regulations and recommendations from Board inspectors.

In 1945, the Department of Health established the Division of Industrial Hygiene to safeguard the health of workers. The Division ceased operations in 1948.⁸⁰

In 1947, the Board established an Accident Prevention Office and its prevention department began promoting joint workplace safety committees in 1947.⁸¹ The Board increased its inspection staff in 1956.⁸²

The Department of Public Health established the Occupational Health Branch in 1957. Following a 1958 report accepted by Cabinet, the branch was given a mandate and hired a nursing consultant and occupational hygienist. The branch was to work closely with the Board, Departments of Mineral Resources, Agriculture and Labour. An occupational hygiene laboratory was established in 1959 and a radiation health officer was engaged in 1962.

A 1971 Department of Public Health report, with an emphasis on public health, rather than workplace safety issues, was critical of the Board's prevention performance, its reactive, rather than proactive, approach and its demonstrated lack of capacity to evaluate unregulated health hazards.

In 1972, the Department of Labour included the boiler and pressure vessels branch, the gas inspection and licensing branch, the electrical and elevator inspection branch, the Office of the Fire Commissioner, and apprenticeship and trade certification branch.

In 1972, workplace prevention services were consolidated in the Department of Labour and twelve Board safety officers and others were transferred from the Board to the Department.⁸³ The Occupational Health Branch was transferred to the Department of Labour effective April 1, 1972. The mines safety unit was transferred to the Department of Labour from the Department of Mineral Resources a year later.

The Occupational Health Act, 1972, mandated health and safety committees where ten or more employees were employed.⁸⁴ This was a strategic move away from predominantly working with employers to achieve safer and healthier workplaces toward seeking the same goal by ensuring worker participation and awareness in occupational health and safety.

It was also the beginning of a national trend of transferring prevention responsibilities away from workers' compensation boards to departments of labour. All provinces but British Columbia followed. However, in a short time, the trend began to be reversed with Quebec transferring prevention responsibilities back to the workers' compensation board. Today, nine

⁸⁰ Saskatchewan Public Health, *Annual Report for the Department of Public Health April 1, 1971-March 31, 1972*, p. 7.

⁸¹ Saskatchewan Workmen's Compensation Board, *Eighteenth Annual Report*, 1947, p. 6.

⁸² Saskatchewan Workmen's Compensation Board, *Twenty-seventh Annual Report*, 1956, p. 5.

⁸³ Saskatchewan Labour, *Department of Labour Twenty-Ninth Annual Report 1973*.

⁸⁴ Government of Saskatchewan, *The Occupational Health Act, 1972*, s. 20.

jurisdictions have primary prevention responsibility assigned to the workers' compensation board.⁸⁵

The 1973, 1978, 1982 and 1986 Committees of Review identified a need to improve research; support for worksite health and safety committees; increased frequency of workplace inspections and enforcement; sharing of information between the Department of Labour's Occupational Health and Safety Division and the Board; education and prevention initiatives for the public and employees; and monitoring and sharing statistics on workplace injuries to better target training and education programs.⁸⁶

The 1992 Committee of Review recommended that the role of the Occupational Health and Safety Division be restricted to enforcing *The Occupational Health and Safety Act, 1977* and regulations and to educating about the Act and regulations. The Board was to be responsible for job safety training and safety education and should exercise more control over the Division's budget. The Division and Board should work together to exchange information which affects their respective roles.⁸⁷

By 1996, plans were crystallizing within the provincial government to have all awareness education and training services transferred to, and delivered by, the Board. Regulation, inspection, enforcement and some specialized services, such as radiation safety, would remain with the Occupational Health and Safety Division in the Department of Labour. The Farm Safety Program⁸⁸ was a candidate for transfer to the Board. However, the plans were not implemented.

Today, the Board funds the "industrial safety program" under *The Occupational Health and Safety Act, 1993* from its assessment and investment revenue.⁸⁹ The Department of Labour, provincial government, employers, employees and a joint worker and employer advisory council are responsible for the effectiveness of the industrial safety program.

The concerns of the joint advisory Occupational Health and Safety Council are:

- (a) occupational health and safety generally and the protection of workers and self-employed persons in specific kinds of situations;
- (b) the appointment of advisory committees by the minister to assist in the administration of this Act;
- (c) any matter relating to occupational health and safety on which the minister seeks the opinion of the Occupational Health and Safety Council; and

⁸⁵ British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nunavut, Nova Scotia, Prince Edward Island, Quebec and Yukon.

⁸⁶ Saskatchewan Workers' Compensation Act Committee of Review, 1973, 1978, 1982, 1986 Reports.

⁸⁷ *Report of the Workers' Compensation Act Review Committee, August 1992*, p. 23.

⁸⁸ Saskatchewan Labour, Farm Safety, <http://www.labour.gov.sk.ca/farmsafety/index.htm> (January 4, 2007).

⁸⁹ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, ss. 2(i) "industrial safety program"; ss. 117(g); ss. 119(a); ss. 135(1)(c) and (2) (b).

- (d) the giving of advice or the making of recommendations to the minister on any matter mentioned in this subsection.⁹⁰

At the request of the Minister and "at least once every five years", the Council must "review the adequacy of this Act and its administration and report the findings and recommendations" to the Minister.⁹¹ At the request of the Minister, the Council began a review process in January 2004 and made a final report in January 2006.

The Board must "consult and co-operate" with the Department of Labour's Occupational Health and Safety Division "on matters relating to the health and safety of workers and self-employed persons."⁹²

The extent to which there is consultation and cooperation is critical to avoiding duplication of services and effective design and delivery of prevention services. The funding, effectiveness, method of delivery and success of the current programs have attracted recurring criticism before the Committees of Review since 1992.

Similarly, there has been discussion for years in Saskatchewan about establishing an occupational health centre to assess, consult, investigate, research, education, create an information network, advocate about hazards and threats to the health of workers and point to prevention measures. The goal is the prevention of occupational illness and disease.

Such centres have been established in several North American and European jurisdictions as alternatives to proactive action by the medical community and workers' compensation programs. Some have been university or hospital based. Some have direct government involvement. Some, like the one in Manitoba, are worker-controlled.⁹³ They are commonly a response to inadequacies in the public health care and information systems and insufficient emphasis on prevention of occupational diseases.

Saskatchewan has a university-based occupational health physician who serves as Chief Occupational Medical Officer (COMO),⁹⁴ who also coordinates the Occupational Health Clinic, established by agreement between the Department of Labour and University of Saskatchewan. There is a Clinical Advisory Board that includes worker and employer representation.

The consistent position of organized labour in Saskatchewan, reiterated in successive submissions to Committees of Review and in other forums, is that there ought to be an Occupational Health and Safety Centre modeled on the one in Manitoba and funded by revenue from the Board.

⁹⁰ Government of Saskatchewan, *The Occupational Health and Safety Act, 1993*, c. O-1.1, ss. 75(2).

⁹¹ Government of Saskatchewan, *The Occupational Health and Safety Act, 1993*, c. O-1.1, s. 84.

⁹² Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, ss. 21.1(1)(e).

⁹³ Manitoba Federation of Labour Occupational Health Centre, <http://www.mtlhbc.mb.ca/> (January 4, 2007).

⁹⁴ Government of Saskatchewan, *The Occupational Health and Safety Act, 1993*, c. O-1.1, s. 79.

3.03 Time Loss Injury Rate - Measuring Injury Frequency

The Saskatchewan Board and other Canadian boards calculate a time loss injury rate for employment covered by *The Workers' Compensation Act*, which is approximately two-thirds of the workers in Saskatchewan.⁹⁵ There is no existing measure of the frequency and severity of employment related injuries and illness for all workers in Saskatchewan, that is workers covered and workers excluded from the Act.

In each Canadian jurisdiction there are different mixes of industries and varying percentages of workers covered by workers' compensation. The experience and hazard level of unintentional injury and illness in the mix of covered industries affects both the time loss injury rate in each jurisdiction and the national average. The data collected by the Association of Workers' Compensation Boards of Canada is not standardized. In addition, entitlements to time loss benefits differ among the jurisdictions. For example, some have waiting periods. The definitions and disincentives to apply for time loss benefits differ. Consequently, inter-jurisdictional comparisons must be approached cautiously.

The time loss injury rate is intended to reflect the risk of employment injury and illness. It is the percentage of covered employees who lose time from work as a result of an injury or illness. It does not include near misses in the workplace, regardless how serious or catastrophic the incident might have been, or injuries that require first aid or other medical attention but do not cause a reported loss of time from work. British Columbia is studying whether there is another appropriate measure to reflect the injury rate.⁹⁶

In the United States, the Bureau of Labor Statistics reports the incidence rate of nonfatal injuries and illnesses by industry and size of employer establishments measured by the number of employees - 1 to 10; 11 to 49; 50 to 249; 250 to 999; and 1,000 or more. For 2003 to 2005, hospitals had the largest number of injuries and illnesses followed by nursing and residential care facilities.⁹⁷ Through the North American Industry Classification System, used by the Bureau of Labor Statistics since 2003, comparisons can be made with the Canadian experience. Hospitals and nursing and residential care facilities are in the G2 industry rate group in Saskatchewan, discussed below.

⁹⁵ Saskatchewan Workers' Compensation Act Committee of Review 2006 Report, *Percentage of Workers Covered by Workers' Compensation (1990-2005)*, Chapter 2 - Coverage and Eligibility for Compensation, Figure 3, p. 5.

⁹⁶ Workers' Compensation Board of British Columbia, Prevention and BC's Occupational Injury Rate, Request for Information & Qualification, RFIQ #042 2006, August 25, 2006.

⁹⁷ United States Department of Labor, Bureau of Labor Statistics, *Workplace Injuries and Illnesses in 2005*, p. 2, <http://www.bls.gov/iif/oshwc/osh/oc/oshwc.htm> (January 24, 2007).

The accuracy of the time loss injury rate of all time loss employment related injuries and illness can be diminished if injuries are not reported, hidden or suppressed.

In some employment situations, injuries do not result in reported time loss because the worker is maintained on full pay and benefits and reassigned to alternate duties or required to report each day and to work no, or fewer, hours; or injured or ill employees use sick leave or are placed on privately insured disability benefit plans to avoid a time loss claim that might adversely affect the safety or claim record of the employer or an employer's organizational unit.

In some employment situations, employees fearful of monitoring and discipline under absentee management policies might not report injuries and illness and, instead, use personal leave to hide the reason for the absence.

While such policies can reduce workers' compensation program costs, they mask the true extent of employment related injuries and illness and can create significant problems for the worker and employer if the injury does not resolve and a reported claim for compensation is made to the Board some time after the injury or onset of the illness.

The U.S. Bureau of Labor Statistics reports the incidence of injuries that result in transfer to another job, restricted duties at work or a combination of these, but no time away from work to recuperate. A restriction includes shortened hours, temporary job change or temporary restriction on regular duties, such as no lifting. The Bureau also reports other recordable cases (ORC) that do not result in time away from work. In some industries the rate for days of job restriction or transfer (DJRT) is higher than the rate for days away from work (DAFW). The two combine for the days away, restricted or transferred (DART).⁹⁸ The Bureau provides an online calculator to help calculate establishment incidence rates for safety management.⁹⁹

With all these variables and considerations, the Board must exercise vigilance to ensure a reduction in the time loss injury rate actually reflects improved prevention rather than other behaviour.

The Board calculates the time loss injury rate for a calendar year by *dividing the number of new lost time claims for injuries and diseases accepted by the Board in the year for workers of registered employers and self-employed persons and workers of employers who have opted for workers' compensation coverage by the estimated total number of full-time equivalent workers covered by workers' compensation.* This is not all workers in Saskatchewan - only those covered by workers' compensation. The number of full-time equivalent workers is estimated from assessable payroll (not gross payroll or pay in the cash economy) and average weekly wages.

⁹⁸ United States Department of Labor, Bureau of Labor Statistics, *Workplace Injuries and Illnesses in 2005*, p. 3, <http://www.bls.gov/nat/home.htm> (January 24, 2007).

⁹⁹ United States Department of Labor, Bureau of Labor Statistics, *How To Compute a Firm's Incidence Rate for Safety Management*, <http://www.bls.gov/nat/osshcya.htm> (January 24, 2007).

Since 2001, the most significant change in the Board's strategic approach has been the emphasis and priority placed on prevention of employment related injuries and illness and the focus on the time loss injury rate. With an operating shortfall in 2002, "Injury prevention became the rallying cry of the day."¹⁰⁰

The Board has targeted for reduction the provincial or average time loss injury rate for all industry groups covered by workers' compensation.

In 2005, the Board calculated the provincial average for all covered industries, including Government of Canada employees, to be 4.25%. Among the Board's 57 industry rate groups, the time loss injury rate ranged from a low of 0.39% (S11 – Legal Offices, Financial, Drafting) to a high of 21.66% (F11 – Conventional Logging Operations).¹⁰¹

In addition to the mix of industries and distribution of employment among the industries in the province, the frequency of time loss injury and illness can be affected by the gender mix of the workforce (women have a lower injury rate);¹⁰² the age distribution (younger workers have a higher rate of injury);¹⁰³ the distribution of permanent and contingent employment (contingent employees have a higher rate of injury);¹⁰⁴ and other factors.

The number of claims received by the Board is the starting point in calculating the provincial average and the rate for each industry rate group. In 2005, the Board had the most reported claims ever in one year (39,904), although it accepted more claims in 2002 (35,128) than in 2005 (34,481).

Since 2001, the number of reported claims as a percentage of the number of workers covered by the workers' compensation program has fluctuated with an unexplained decrease in 2004. Consistently, 11.5 % to 12% of the entire covered workforce has reported an injury each year since 1996. In 2005, this percentage increased while the time loss injury rate decreased. This could indicate that the incidence of injury has not declined. Rather the incidence of days of job restriction or transfer has increased compared to the days away from work.

¹⁰⁰ Saskatchewan Workers' Compensation Board, *Report to Stakeholders 2003*, p. 5.

¹⁰¹ Saskatchewan Workers' Compensation Board, *Report to the Stakeholders 2005*, p. 26.

¹⁰² Saskatchewan Workers' Compensation Board, *Statistical Supplement 2005*, Table 6.

¹⁰³ Saskatchewan Workers' Compensation Board, *Statistical Supplement 2005*, Table 6. – 33.14% of all injured workers in 2005 were under 30 years of age.

¹⁰⁴ McNamara, Maria, *The Hidden Health and Safety Costs of Casual Employment*, Industrial Relations Research Centre, University of New South Wales, May 2006.

Fig. 19: Reported Claims as Percentage of Workers Covered (1996-2005)

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
Workers Covered	302,652	309,083	315,190	314,048	306,469
Reported Claims	37,169	38,954	37,657	36,346	37,717
As % of Workers Covered	12.28%	12.60%	11.95%	11.57%	12.31%
	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
Workers Covered	308,719	306,518	309,362	325,565	327,064
Reported Claims	38,240	39,821	38,919	37,715	39,904
As % of Workers Covered	12.39%	12.99%	12.58%	11.58%	12.20%

The next step in the calculation of the time loss injury rate is to determine the number of claims accepted for time loss or fatality benefits. Each time loss claim, regardless of duration or severity of injury, is counted as one claim. Previous time loss claims that are reopened are not counted.

The practices and policies of workers' compensation boards on the acceptance of claims for time loss compensation, not medical benefits, will impact the time loss injury rate in each jurisdiction. Rate fluctuations over time within a jurisdiction or between jurisdictions in any year can, in part, reflect workers' compensation board decision-making to allow or disallow claims. Disallowing or allowing a high percentage of fatal and time loss claims will ultimately decrease or increase the percentage of time loss injuries.

A profile of the Board's claims experience including the claims disallowed and not accepted for various reasons from 1996 is in the following table. The percentage of reported claims denied or disallowed has risen since 2001, but not to the level from 1996 to 1999. The number of claims rejected because there was no reply from the worker has doubled since 1996.

Duplicate claims can be opened in the Board's system and then cancelled when reports from employers, workers and health care providers use different names for a worker (e.g. Robert Doe and Bob Doe). Or a new claim can be opened and, because it was not located for some reason, a second one is opened. Later, one of them is cancelled. Unlike an increase in the number of disallowed claims, the duplication and cancellation of claims does not impact the equation for calculating the time loss injury rate.

Fig. 20: Reported Claims Disallowed and Not Accepted (1996-2005)

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Reported	37,169	38,954	37,657	36,346	37,717	38,240	39,821	38,919	37,715	39,904
Disallowed	2,926	2,867	3,007	2,809	2,409	2,206	2,087	2,002	2,185	2,584
As % Reported	7.87	7.36	7.99	7.73	6.39	5.77	5.24	5.14	5.79	6.48
Not Accepted For Other Reasons										
Rejected - No Reply	731	878	1,022	1,438	1,368	1,251	1,318	1,034	1,287	1,471
Duplicate / Cancelled	580	404	360	412	551	739	825	889	817	906
Not Covered by Statute	159	177	177	243	247	275	194	225	290	306
Inter-provincial Claim	351	317	265	252	302	366	276	276	326	308
Other	690	766	478	284	135	1	271	457	331	160
Total	2,511	2,542	2,302	2,629	2,603	2,632	2,884	2,881	3,051	3,151
Total Disallowed & Not Accepted										
Total	5,437	5,409	5,309	5,438	5,012	4,838	4,971	4,883	5,236	5,735
As % Reported	14.63	13.89	14.10	14.96	13.29	12.65	12.48	12.55	13.88	14.37
Accepted	31,732	33,545	32,348	31,476	32,927	33,552	35,128	34,949	32,681	34,481
Time Loss	13,018	13,430	13,081	13,108	14,433	14,786	15,174	14,876	14,329	13,904
No Time Loss	18,690	20,690	19,240	18,337	18,439	18,737	19,938	20,047	18,326	20,557
Fatalities	24	36	27	31	35	29	16	26	26	20

After the Board determines the number of accepted time loss claims, it calculates the number of full time equivalent workers covered by workers' compensation.¹⁰⁵

The Association of Workers' Compensation Boards of Canada (AWCBC) reports that workers' compensation coverage for 2005 ranges from a high of 100% of the employed workforce in two territories and 96.99% in Newfoundland, where only professional athletes and persons working for individuals in private homes are not covered, to 65% in Manitoba. For 2005, the AWCBC reports the extent of coverage in Saskatchewan as 76.05%, while the Board reports it as 67.72%.¹⁰⁶ The difference is the method of calculating average wages and the Board using more up to date labour force statistics.

The Board has used a consistent approach to calculate the time loss injury rate from 1998 to 2005.¹⁰⁷ The rate in 2005 was the lowest since 1998.

¹⁰⁵ Saskatchewan Workers' Compensation Act Committee of Review 2006 Report, *Percentage of Workers Covered by Workers' Compensation (1990-2005)*, Chapter 2 – Coverage and Eligibility for Compensation, Figure 3.

¹⁰⁶ Association of Workers' Compensation Boards of Canada, *Jurisdictional Summary of Worker Coverage*, January 2006, www.awcbc.org/english/board/pdfs/ASSESS_WORKER_COVERAGE.pdf (January 4, 2007); Saskatchewan Workers' Compensation Act Committee of Review 2006, *Percentage of Workers Covered by Workers' Compensation*, p. 2.

¹⁰⁷ www.labour.gov.sk.ca/cor_resources/Percentage%20of%20Workers%20Covered.pdf (January 4, 2007).

¹⁰⁸ Saskatchewan Workers' Compensation Act Committee of Review 2006, *Time Loss Injury Rate: 1998-2005*, http://www.labour.gov.sk.ca/cor_resources/timelossinjuryrate.pdf (January 4, 2007).

Fig. 21: Time Loss Injury Rate (1998-2005)

<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
4.36	4.30	4.71	4.79	4.95	4.81	4.40	4.25

With no change in the scope of workers covered by the program, a relatively static number of workers covered and a declining injury rate, the total number of days for which compensation was paid for wage loss due to total temporary disability should decline, unless the injuries are much more severe. The total days has declined.

Fig. 22: Total Days of Temporary Total Disability Payments (2001-2005)

<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
611,452	748,585	733,023	656,267	559,700	566,599

In 2002, the Board set a goal to reduce the Saskatchewan time loss injury rate to 4.00% by December 31, 2007.¹⁰⁸ With current claims volumes, a 0.25% decrease or increase in the rate is approximately 800 accepted time loss claims. A 0.95% decrease is approximately 3,040 accepted time loss claims per year.

In 2005, the Board advanced the target date by one year to December 31, 2006.¹⁰⁹ The Board's projection in December 2006 was that the 2006 injury rate will be 4.13%.¹¹⁰ The Board's goal for the coming years is a steady decline in the time loss injury rate.

Fig. 23: Board's Time Loss Injury Rate Goals (2006-2010)

<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
4.00	3.85	3.70	3.60	3.50

3.04 Support for Industry Prevention and Safety Associations

One Board strategy to reduce the time loss injury rate is continued support for industry prevention and safety associations.

From 1929 to 1972, the Board served as fund-raiser and cashier for industry specific, "injury prevention and safety" associations that had both worker and employer representation. Funding was eliminated in 1972 when responsibility was transferred to the Department of Labour. The 1978 Committee of Review recommended it be restored and administered by the Board.¹¹¹ That happened,

¹⁰⁸ Saskatchewan Workers' Compensation Board, *Strategic and Operational Plan 2003 – 2005*, p. 13.

¹⁰⁹ Saskatchewan Workers' Compensation Board, *Strategic and Operational Plan 2005 – 2007*, p. 17.

¹¹⁰ Saskatchewan Workers' Compensation Board, *The Compensation Reporter*, December 2006, p. 1.

¹¹¹ *Report of the Workers' Compensation Act Review Committee*, December 1978, p. 42.

but the 1979 amendments and the current statute do not require worker representation.¹¹² The Board has required worker participation through policy.¹¹³

Fig. 24: Industries with Most Injuries Reported to WCB (2005)

	Industry Description	Injuries
1.	Health Authorities, Hospitals and Care Homes	5,071
2.	Construction	3,062
3.	Grocery, Department Stores, Hardware, Wholesale	2,750
4.	Restaurants, Catering, Dry Cleaning, Hotels and Taxis	2,623
5.	Automotive Service Shops, Towing, Automotive and Implement Sales and Service	2,028
6.	Agricultural Equipment, Machine Shops, Manufacturing, Iron and Steel Fabrication	2,000
7.	Transportation, Couriers, Commercial Bus	1,622
8.	Cities, Towns, Villages, RMs	1,533
9.	Government of Saskatchewan	1,264
10.	Processing Meat, Poultry and Fish	1,127
	Total	23,080

The money given to each association by the Board is raised through additional assessments on the employers in the rate group or groups that formed the association. The grant amounts and time loss injury rates since 1998 for the industry safety associations representing 16 industry classes are in Figure 28.

The Board is responsible to ensure the money is spent for the reasons it is collected and to hold the safety associations accountable for the effective and efficient expenditure of the money.

In 2002, the Board adopted guidelines for safety association funding.¹¹⁴ For continued funding, the Board requires associations to meet reporting requirements and enter into a signed agreement with the Board. Some representations to the Committee call for clearer and more stringent accountability requirements.

There has been no consistent relationship between increases in the grant amounts and changes in the injury rates. For the period 1998 to 2005, for which the Board has used a consistent method to calculate time loss injury rates, the percentage increases in grants have varied among the safety associations:

- The Construction Safety Association, Saskatchewan Association of Health Organizations, Forestry Safety Association and Prairie Implement Manufacturers Association and the Service and Hospitality Safety Association received 50% to 99% more funding in 2005 than in 1998.

¹¹² Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W 47.1, s. 145.

¹¹³ Saskatchewan Workers' Compensation Board, "Safety Association Funding", *Policy Manual* (POB, 06/2002).

¹¹⁴ Saskatchewan Workers' Compensation Board, "Safety Association Funding", *Policy Manual* (POB, 06/2002).

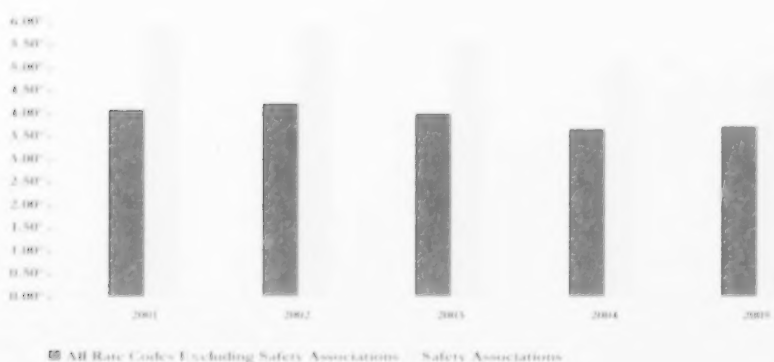
- The Saskatchewan Heavy Construction Safety Association and the CG Safety Association of Saskatchewan Inc. received over 100% more funding in 2005 than in 1998.
- The Saskatchewan Meat Industry Safety Association received over 200% more funding in 2005 than in 1998.

From 1998 to 2005, there have been varying percentage reductions in the time loss injury rate in 11 of the 16 industry classes - meat processing (60.82%); planing, sawmills and waferboard (60.04%); agricultural equipment (36.72%); residential (4.37%) and commercial/industrial construction (28.36%); conventional logging operations (14.22%) and log/pulpwood hauling (24.15%); restaurant, catering and dry cleaning (22.76%); motel and taxi (22.29%); automotive sales, service, service shops and towing (16.07%); and courier and transportation industries (9.35%).

During this period, there have been increases in the injury rate for mechanical logging (80.43%); hostels and independent services (26.01%); road construction (21.41%); health care (11.51%); and construction trades (8.67%).

The time loss injury rate has decreased more in industries with safety associations than in industries without.

Fig. 25: Injury Rates - Industries With and Without Safety Associations (2001-2005)



The Committee received diverse representations on the effectiveness of industry prevention and safety associations and their education and training programs.

There was particularly critical comment on the approach to worker participation and the effectiveness of the Saskatchewan Association of Health Organizations

(SAHO) in the industry with the highest growth in employment and the highest number of employment related injuries.

There were submissions that the true incidents of injury and illness in health care is not captured by the time loss injury rate measuring days away from work because of the high incidents of days of job restriction and transfer.

The Committee heard divided views on the persons responsible for the high time loss injury rate in health care.

Some argue employers are not being held accountable and too much blame is being placed on workers. They argue the root causes of workplace injuries and illness are employer organizational policies resulting in overwork, conflicting work demands, reduced worker to client ratios and downloading of managerial responsibilities. Instead of addressing these issues, the responses are wellness programs focused on worker lifestyle; attendance management programs focused on worker absenteeism; and behavioural science programs focused on worker behaviour.

The Committee did not receive a submission or representations from SAHO or any health care employer.

Fig. 26: Health Authorities, Hospitals and Care Homes (G2) (2001-2005)

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
Employers Assessed	31,225	31,327	31,630	35,986	36,891
G2 Employers	344	352	358	385	416
Percentage	1.10%	1.12%	1.13%	1.07%	1.13%
Assessable Payroll (\$m)	\$9,177	\$9,441	\$10,003	\$10,470	\$11,034
G2 Assessable Payroll	\$998	\$1,025	\$1,117	\$1,193	\$1,243
Percentage	10.88%	10.86%	11.17%	11.40%	11.27%
Workers Covered	308,719	308,518	308,362	325,565	327,064
G2 Workers Covered	36,676	37,292	38,057	38,503	38,033
Percentage	11.88%	12.09%	12.34%	11.83%	11.63%
No Time Loss Claims Accepted	18,737	19,938	20,047	18,326	20,557
G2 No Time Loss Claims	2,122	1,616	1,662	2,173	2,603
Percentage	11.33%	8.11%	8.29%	11.86%	12.66%
Time Loss Claims Accepted	14,786	15,174	14,876	14,329	13,904
G2 Time Loss Claims	2,484	2,540	2,713	2,706	2,468
Percentage	16.80%	16.74%	18.24%	18.88%	17.75%
PFI Awards	407	484	469	431	460
G2 PFI Awards	20	28	31	20	26
Percentage	4.91%	5.79%	6.61%	4.64%	5.65%
Accident Event of Time Loss Claims					
Contact with Objects and Equipment	3,811	3,535	2,949	3,197	3,393
G2	270	267	234	283	277
Percentage	7.08%	7.55%	7.93%	8.85%	8.16%
Falls	1,978	1,942	1,819	2,017	2,100
G2	247	216	268	292	280
Percentage	12.49%	11.12%	14.73%	14.48%	13.33%
Bodily Reaction and Exertion	6,796	7,017	5,981	6,587	6,461
G2	1,606	1,624	1,549	1,656	1,544
Percentage	23.63%	23.14%	25.90%	25.14%	23.90%
Exposure to Harmful Substances	781	698	773	752	653
G2	108	97	112	120	116
Percentage	13.83%	13.90%	14.49%	15.96%	17.76%
Assaults and Violent Act	272	302	297	268	322
G2	98	115	139	96	117
Percentage	36.03%	38.08%	46.80%	35.82%	36.34%
Time Loss Injury Rate	4.79%	4.95%	4.81%	4.40%	4.25%
G2	6.78%	6.85%	7.20%	6.83%	6.59%
Average Claim Duration (Days)	27.6	25.4	25.0	23.2	21.6
G2	35.3	31.2	29.1	27.1	25.9
Average Cost per Time Loss Claim	\$3,037.66	\$2,959.06	\$2,945.79	\$3,025.05	\$2,819.71
G2	\$3,304.36	\$3,016.05	\$2,917.33	\$3,063.77	\$2,560.87

In 2003, the Provincial Auditor reported on health care:

Between 10% and 20% of health care workers are injured annually in many long-term care centres, hospitals, and home care services. In a few Saskatchewan health care facilities, up to 32% of health care workers are injured annually.

WCB payments for treatment, rehabilitation, and lost wages were about \$6 million per year for the two largest regions. Expenses for sick time, replacement workers, and overtime could be significant. The two largest health regions paid WCB \$10.9 million in 2001 and \$8.9 million in 2002.

During times of staff shortages, the human and financial costs may be higher, overtime to staff working extra hours, replacement staff for injured co-workers.¹¹⁵

The Provincial Auditor's follow-up in 2004 reports: "The Department of Health set aside \$6 million in 2004-2005 for capital equipment related to safety for staff and patients. Some was allocated to reduce injuries. Five months after year-end, the Regina Qu'Appelle board received a report about injuries in 2003-2004. That report shows that injuries requiring medical attention are up by 24% and time-loss injury claims are up by 10.5%."¹¹⁶

In January 2006, the Occupational Health and Safety Council¹¹⁷ recommended "...the Department of Health in partnership with all Regional Health Authorities initiate a comprehensive and systemic strategy to create a culture of OHS compliance in the health sector."

Council agreed that these issues arose primarily from a systemic failure to comply with existing regulatory standards. Council concluded that this non-compliance had its roots in the lack of health care management's understanding, commitment and resources to create a culture of compliance in the industry. For example, in many cases management has failed to establish front line supervision.¹¹⁸

The Board reports that it has targeted and been working with the health care sector as one that needs to improve workplace safety and health. It reports the time loss injury rate is now in a downward trend.¹¹⁹

In 2005, *WorkSafe Saskatchewan* partnered with SAHO and the health regions to develop a program specific to health care workers to be implemented in 2006.¹²⁰ The program has not yet been implemented. It is important that Board partnerships with the regional health authorities on prevention and return to work program design and implementation promote safe return to work that does not jeopardize the health of injured workers and their co-workers.

¹¹⁵ Saskatchewan Provincial Auditor, Chapter 2 – Health, 2003 Report Volume 1, p. 27.

¹¹⁶ Saskatchewan Provincial Auditor, Chapter 2D – Health, 2004 Report Volume 3, p. 72.

¹¹⁷ Government of Saskatchewan, *The Occupational Health and Safety Act*, 1993, s. 74.

¹¹⁸ Saskatchewan Occupational Health and Safety Council, *Review of The Occupational Health and Safety Act (1993) and The Occupational Health and Safety Regulations (1996) of Saskatchewan*, January 2006.

¹¹⁹ Saskatchewan Workers' Compensation Board, *Strategy and Operational Plan 2006-2008*, p. 16.

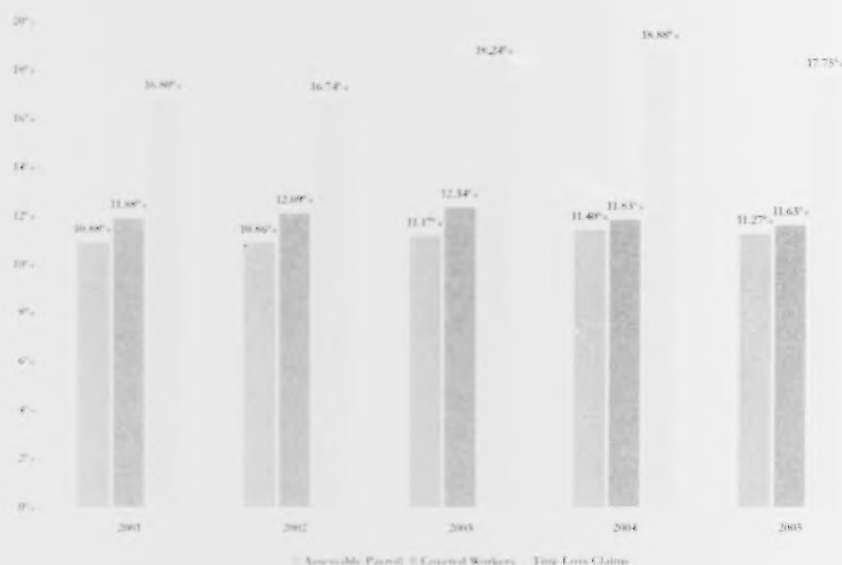
¹²⁰ Saskatchewan Workers' Compensation Board, *Report to Stakeholders 2005*, p. 11.

There is no industry specific data on injury rates in health care or other industries among Canadian jurisdictions because of differences in the methods of defining and calculating industry workforces. With this limitation, using a non-weighted average of the ten provincial injury rates for health care, the national time loss injury rate for health care for 2005 is 3.58.¹²¹ Saskatchewan had the highest rate at 6.07, which is lower than the actual 6.59 because of differences in the calculation method.

As shown in the following table the health care percentage of all time loss injuries in Saskatchewan is disproportionate to the percentage of health care workers and assessable payroll. In addition to the physical, emotional and financial cost to individual health care workers, their families and co-workers, this is a significant cost for Saskatchewan taxpayers.

The Committee agrees the incident of injury among health care workers is unacceptable and that a culture of workplace health and safety must be established in the health care sector. This requires political leadership and leadership at the highest level of each regional health authority with a focus on employer practices in addition to the practices of individual workers and the availability of lifting and other equipment.

Fig. 27: Percentage of Health Care Payroll, Workers and Time Loss Injuries (2001-2005)



¹²¹ The Workers' Compensation Board has provided this information to the Committee.

Recommendation:

Due to the high incidents of workplace injury and illness, the Minister of Health take positive action to establish a culture of workplace health and safety throughout the health care sector and ensure each Regional Health Authority is accountable to instill, and invest in, a culture of preventing employment related injury and illness with high standards and continuous improvement in all its workplaces.

3.05 Health and Safety Awareness and Education and Board Expenditures

In February 2002, when Saskatchewan's 4.95% rate of time loss injuries was the second highest in Canada, the Board and the Department of Labour initiated *WorkSafe Saskatchewan* to promote a "positive safety culture" in workplaces and to motivate "workplace parties to improve their occupational health and safety standards, attitudes and behaviour."¹²²

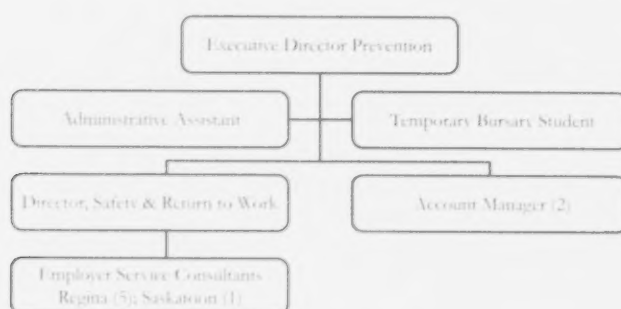
This initiative is part of a broader full-life *Safe Saskatchewan* initiative led by the Saskatchewan Safety Council to which the Board contributed \$50,000 seed funding.

The goal of *WorkSafe Saskatchewan* is to integrate safety and injury prevention programs across the province and reduce the rate of workplace injuries. A website (www.worksafesask.ca) and CD-ROM were created. An advertising campaign begun in 2003 continues.

Through the Board's current Prevention, Safety and Return-to-Work Department, the Board aims to provide safety leadership through educational seminars on injury prevention and developing a safety program. A position of Executive Director of Prevention was created to underscore the Board's commitment to workplace safety. The Executive Director oversees the Board's prevention initiatives including *WorkSafe Saskatchewan*, the Board's involvement in *Safe Saskatchewan* and delivery of employer-directed programs centred on return to work and injury prevention.

¹²² Memorandum of Understanding between Workers' Compensation Board and Saskatchewan Labour, March 14, 2002.

Fig. 28: Board's Prevention, Safety and Return-to-Work Organization (2006)



Safety training under *The Occupational Health and Safety Act, 1993* is the responsibility of the Occupational Health and Safety Division of the Department of Labour.¹²³ All training done by the Division is paid from Board revenue.¹²⁴

In 2003, the *WorkSafe Saskatchewan* joint committee initiated the Top 10 program, which identified for special education and inspection attention ten employers whose employees over the previous three years were 5% of all the covered employees, but experienced 10% of all the time loss injuries. Since the program began, the aggregate time loss injury rate for the Top 10 fell by 20%. In 2005, the time loss injury rate for these employers dropped to 6.72%.¹²⁵ In 2006, four of the ten employers were replaced by four other employers.

In 2001, the Department of Labour, in partnership with high schools, the Saskatchewan Institute of Applied Sciences and Technology and others, built on the existing Saskatchewan Federation of Labour Ready for Work program (www.readyforwork.sk.ca) to prepare young workers, who experience high injury rates, for their first workplace experiences.

In 2003, the Board partnered with the Saskatchewan Federation of Labour to fund a Ready for Work coordinator to make health and safety presentations to high school students.

In 2004, *WorkSafe Saskatchewan* partnered with others to initiate the applied Occupational Health and Safety Practitioners Program.¹²⁶

In 2005, the Board committed to fund Work Plays to deliver workplace health and safety messages to high school students.

¹²³ Government of Saskatchewan, *The Occupational Health and Safety Act, 1993*, O-1.1, ss. 70(c).

¹²⁴ Saskatchewan Workers' Compensation Board, *Annual Report 2005*, p. 31.

¹²⁵ Saskatchewan Workers' Compensation Board, *Report to the Stakeholders 2005*, p. 22.

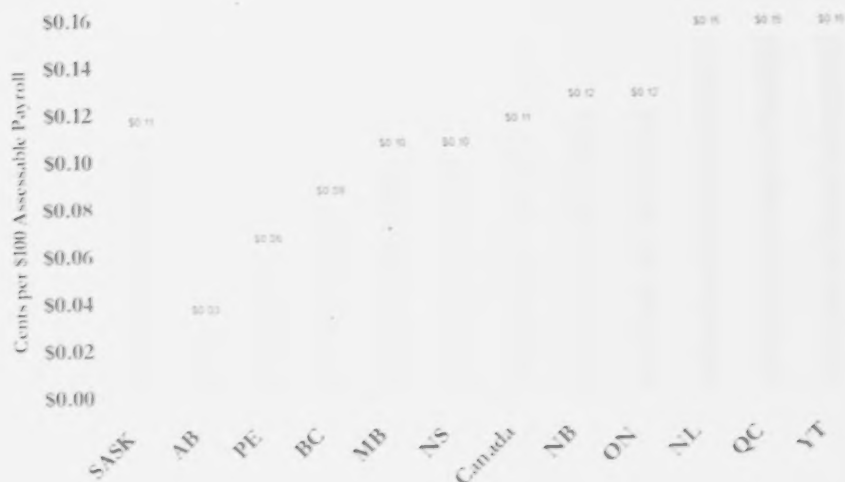
¹²⁶ Saskatchewan Labour, Occupational Health and Safety Practitioner Program <http://www.labour.gov.sk.ca/safety/practitionerprogram/practitionerprogram.htm> (January 4, 2007).

In 2005, the Board began development of an audit of employer prevention programs. A successful audit leads to a safety certificate.¹²⁷ The Board produces an annual Day of Mourning (April 28th) poster.

The legislated and other expenditures by the Board on prevention for each of the past ten years are in a following table.

Across Canadian jurisdictions, the Association of Workers' Compensation Boards of Canada measures the cost of occupational health and safety from a rate setting perspective to identify the rate charged to finance the cost of occupational health and safety. It is the total occupational health and safety cost divided by the assessable payroll. Although the Board's expenditures have increased since 2000, this measure of its costs has remained constant at 10c or 11c per \$100 of assessable payroll because the assessable payroll has steadily increased each year. There are no inter-jurisdictional comparison data available on expenditures per worker.

Fig. 29: Jurisdictional Comparison - OH&S Costs per \$100 of Assessable Payroll (2004)



¹²⁷ Saskatchewan Workers' Compensation Board, *Report to Stakeholders 2005*, p. 12.

Fig. 30: Prevention Expenditures and Association Grants (1996-2005)

PREVENTION EXPENDITURES	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Occupational Health and Safety Division Services	\$ 3,846,000	\$ 4,065,000	\$ 4,630,000	\$ 5,224,000	\$ 5,404,000	\$ 6,246,000	\$ 6,072,000	\$ 6,339,000	\$ 6,943,000	\$ 7,765,000
Education and Training/Preventions Services	\$ -	\$ -	\$ 242,000	\$ 614,000	\$ 617,000	\$ 795,000	\$ 537,000	\$ 589,000	\$ 463,000	\$ 93,000
WorkSafe Saskatchewan	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 32,000	\$ 590,000	\$ 890,000	\$ 1,145,000
SFL Ready for Work Coordinator	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 81,134	\$ 82,268	\$ 87,280	\$ 112,479
Day of Mourning Poster	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5,193	\$ 1,771	\$ 1,727	\$ 1,925
Safe Saskatchewan	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 50,000	\$ 99,678
Work Plays	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 15,000
Total Prevention Expenditures	\$ 3,846,000	\$ 4,065,000	\$ 4,872,000	\$ 5,838,000	\$ 6,021,000	\$ 7,041,000	\$ 6,641,000	\$ 7,518,000	\$ 8,296,000	\$ 9,003,000
SAFETY ASSOCIATION COLLECTIONS										
- Sask. Construction Safety Assn. Inc.	\$ 550,000	\$ 525,000	\$ 535,000	\$ 545,000	\$ 595,000	\$ 750,000	\$ 688,379	\$ 735,000	\$ 800,000	\$ 850,000
- Sask. Association of Health Org.	\$ 377,587	\$ 382,087	\$ 386,944	\$ 410,212	\$ 410,212	\$ 460,750	\$ 371,126	\$ 645,000	\$ 645,000	\$ 735,441
- SasLatchewan Forestry Safety Assn.	\$ -	\$ -	\$ 250,000	\$ 250,000	\$ 290,000	\$ 344,400	\$ 398,024	\$ 401,000	\$ 378,590	\$ 432,667
- Heavy Construction Safety Assn. of Sask.	\$ 147,784	\$ 207,900	\$ 170,623	\$ 235,040	\$ 302,000	\$ 239,208	\$ 336,122	\$ 368,791	\$ 282,400	\$ 378,736
- C-6 Safety Assn. of Sask. Inc.	\$ -	\$ 49,560	\$ 145,000	\$ 180,000	\$ 199,576	\$ 250,825	\$ 320,884	\$ 320,871	\$ 278,227	\$ 300,000
- Prairie Implement Manufacturers Assn.	\$ 99,700	\$ 100,300	\$ 190,400	\$ 213,108	\$ 237,360	\$ 324,875	\$ 203,903	\$ 286,157	\$ 294,811	\$ 289,133
- Service & Hospitality Safety Assn. of Sask.	\$ -	\$ 79,250	\$ 180,000	\$ 149,800	\$ 198,600	\$ 189,300	\$ 269,126	\$ 169,796	\$ 351,550	\$ 277,700
- Sask. Meat Industry Safety Assn.	\$ -	\$ -	\$ 45,600	\$ 70,390	\$ 82,600	\$ 108,300	\$ 94,288	\$ 117,550	\$ 132,870	\$ 137,586
- Sask. Trucking Assn.	\$ 118,600	\$ 146,291	\$ 164,960	\$ 216,764	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
- Sask. Prof. Drivers Safety Council Inc.	\$ -	\$ -	\$ -	\$ -	\$ 216,000	\$ 160,000	\$ 406,000	\$ 516,000	\$ -	\$ -
Total Collections for Safety Assns.	\$ 1,350,000	\$ 1,655,000	\$ 1,933,000	\$ 2,233,000	\$ 2,635,000	\$ 2,762,000	\$ 3,185,000	\$ 3,369,000	\$ 3,227,000	\$ 3,449,000
TOTAL PREVENTION EXPENDITURES AND ASSOCIATION COLLECTIONS	\$ 5,205,000	\$ 5,720,000	\$ 6,805,000	\$ 8,071,000	\$ 8,656,000	\$ 9,803,000	\$ 9,826,000	\$ 10,887,000	\$ 11,523,000	\$ 12,452,000

3.06 Workplace Responsibility System

The pervasive Canadian internal responsibility approach to regulating occupational health and safety seeks to improve workplace conditions through empowering workers. It does this by giving them the right to refuse to perform unsafe work, the right to information on workplace hazards and equal participation in workplace health and safety committees mandated to oversee workplace health and safety conditions.

The belief is that an internal responsibility approach is more adaptive to individual workplaces; administrative costs are lower than external oversight; and enforcement is more immediate and responsive because the workers participate.

The opposing view is that employees lack the necessary expertise especially in occupational health; employees have unequal bargaining power with the employer; and health and safety is a low priority for workers and therefore for their unions.

Whatever the merits and measures of the effectiveness of this approach properly implemented in some workplaces, the time loss injury rate has not dramatically declined, even in highly unionized workplaces, since it was adopted in 1972.¹²⁸

The Board has no direct role in the workplace responsibility system, although it may use components of it to assist in strategies for returning injured workers to work.

In 2006, the Board partnered with the Saskatchewan Safety Council and Saskatchewan Federation of Labour to initiate a Safe Worker program to recognize workers who exemplify workplace safety and injury prevention and to reinforce the workplace responsibility system. The province's 4,500 Occupational Health and Safety Committees were contacted to nominate individuals.¹²⁹

3.07 Health and Safety Standard Setting and Enforcement

Direct occupational health and safety regulation seeks to change employer behaviour through rules prescribing and proscribing policies and practices enforced through inspection and penalties and sanctions for non-compliance. Their force is in education and the cost-benefit equation they impose on employers.

There are always challenges to find the balance between administrative costs providing adequate, meaningful and effective enforcement; the size and

¹²⁸ Government of Saskatchewan, *The Occupational Health Act, 1972*.

¹²⁹ Saskatchewan Workers' Compensation Board, *Report to the Stakeholders 2005*, p. 12.

frequency of penalties and sanctions; and prevention costs to employers. Direct regulation that requires re-engineering or re-organization of the production process attracts its own cost-benefit analysis.

Regulation adoption is always contentious and often slow to respond to technological and organizational change. Modest improvements over time in workplace health and safety usually generate complaints about insufficient administrative commitment and funding.

The Board is not part of the regulatory regime setting and enforcing health and safety standards and practices.

The Board can supply the Occupational Health and Safety Division with information about employer accident experience, which the Board "considers appropriate for the purposes of improving occupational health and safety."¹³⁰ In 2000, the Occupational Health and Safety Council recommended the injury classification system be rationalized "to allow for more sophisticated analysis of injury by type of injury, occupation and cause of injury."¹³¹

3.08 Claims Cost Experience Rating Assessment - Employer Financial Incentive

The Board has the authority to punish and reward employers for the claims cost experience of their employees through merit rating and other mechanisms.¹³²

The Board uses this authority to create financial incentives for employers when setting annual assessment rates and, in this way, rewards and penalizes employers for their claims costs relative to other employers in their group. The incentive is intended to encourage employers to create safer workplaces and prevent injuries and illness.

Since 1936, the Board has adjusted employer coverage costs in some manner to reflect claims experience.

In 2005, the Board adopted a new claims cost Experienced Rating Assessment program to replace the 1992 Merit/Surcharge program that had amalgamated the 1980 Merit Rebate and the 1988 Surcharge Penalty programs. The new approach commenced in 2005 as part of the Board's annual assessment rate setting.¹³³

¹³⁰ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W 47.1, ss.2 (r.3) "Occupational Health and Safety Division"; s. 139.1.

¹³¹ The Occupational Health and Safety Council, *Review of The Occupational Health and Safety Act, 1993 of Saskatchewan* (April 2000), p. 14.

¹³² Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W 47.1, s. 139.

¹³³ Saskatchewan Workers' Compensation Board, "Experience Rating Program" *Policy Manual*, B.O. 05/2006.

Government of Canada is a deposit account and, as such, a fully experience rated employer sharing no collective liability with other employers. It reimburses the Board for all benefits paid on its behalf plus an administration fee. No provision for payment of claims under this Act is included in the Board's liabilities for future benefit payments.

Fig. 31: GECA Employees, Costs and Fees Earned by the Board (1996-2005)

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
Employees	7,948	7,342	7,219	7,218	7,480
Reported Claims	558	502	498	468	534
Time Loss Claims	275	234	229	255	293
Injury Rate	3.46 ^a	3.19 ^a	3.17 ^a	3.53 ^a	3.29 ^a
Claims Costs	\$1,604,349	\$1,604,349	\$1,685,809	\$2,378,857	\$1,991,628
Administration	\$429,524	\$523,330	\$505,669	\$766,579	\$594,211
Fees					
Adjudication Fees	\$58,572	\$138,497	\$101,934	\$147,732	\$158,783
Total Fees	\$488,096	\$661,827	\$607,603	\$914,311	\$752,994
Fees as % of Costs	30.42 ^a	41.25 ^a	36.04 ^a	38.43 ^a	37.80 ^a

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
Employees	7,990	7,986	7,943	7,937	7,917
Reported Claims	590	648	651	665	684
Time Loss Claims	390	411	446	442	338
Injury Rate	4.88 ^a	5.15 ^a	5.62 ^a	5.57 ^a	4.27 ^a
Claims Costs	\$2,096,047	\$2,183,273	\$2,750,942	\$2,532,934	\$2,557,100
Administration	\$559,144	\$552,046	\$694,532	\$619,976	\$660,058
Fees					
Adjudication Fees	\$268,472	\$248,809	\$238,567	\$236,412	\$260,444
Total Fees	\$827,616	\$800,855	\$933,099	\$856,388	\$920,502
Fees as % of Costs	39.48 ^a	36.68 ^a	33.92 ^a	33.81 ^a	36.00 ^a

The provincial government and its departments are in a rate group (G51) in which it does not share collective liability with other employers. In this way, it is a fully experience rated employer.

Generally, for-profit employers and most non-profit and public sector employers respond to the financial incentives of experience rated assessments. Their behavioural response may or may not be what the Board hopes. Large and small employers may respond differently.

Financial incentives might prompt some employers to invest in, and pursue, strategies to reduce and eliminate both the frequency and severity of workplace injuries. It might encourage some employers to pursue legitimate claims management behaviour, such as establishing return to work programs, which assist in successful rehabilitation, accommodation and prolonged return to work for injured workers.

While experience rating generally has a positive impact, it is based on claims cost experience, not accident experience. It does not dictate or direct how to reduce claims cost experience. It contains a moral hazard that the behavioural response will be to focus only on claims and not on prevention. It might provoke some employers to pursue aggressive, intensive and inappropriate claims management behaviour, such as claims suppression or disingenuous alternate or light work assignments for the disabled worker. It might provoke legal and prolonged challenges to legitimate claims to avoid or delay claims costs and their impact. It can engender screening of job applicants likely to report a claim or retaliation against those who do.

For many employers, financial incentives will likely result in both prevention initiatives and increased claims management. It is too soon to identify and assess the impact and response of Saskatchewan employers to the current program of rate assessment based on claims cost experience. In the first year, 2005, when the Board was pursuing other new prevention initiatives, the time loss injury rate declined. The Board has credited this to the *WorkSafe Saskatchewan* initiative, not claims cost experience rated assessment.¹³⁸

It is foreseeable that, as a consequence of claims cost experience rating assessments, individual employers will take greater interest in obtaining cost relief from all or some of the costs of a claim. The total amount of claims cost relief increased significantly in 2003, when the claims cost experience rating assessments program was being developed. The Board's experience rating policy anticipates increased attention to claims cost relief:

19. A firm may receive relief of the cost of a claim due to the following circumstances:
 - a. Application of Second Injury cost relief (Second Injury and Re-employment Reserve) or application of Disaster and Occupational Reserve cost relief;
 - b. Third party recovery of cost (subrogation);
 - c. Transfer of claim costs to another employer or claim;
 - d. Administrative errors and delayed appeal decisions;
 - e. Any other consideration as directed by the WCB.
20. Where cost relief has been granted under Point 19 above, the credit is applied to the employer's account in the year in which that cost relief was granted. The effect of these credits will be to offset claim costs used for the calculation of the experience rate over the next three years. Experience rates for previous years are not recalculated based on these revised figures.¹³⁹

¹³⁸ Saskatchewan Workers' Compensation Board, *Report to the Stakeholders 2005*, p. 22

¹³⁹ Saskatchewan Workers' Compensation Board, "Experience Rating Program", *Policy Manual*, POL 05/2006.

Fig. 32: Claims Cost Relief Amounts (2000-2005)

Industry	2000	2001	2002	2003	2004	2005
Agriculture	\$62,368	\$157,864	\$501,282	\$450,433	\$596,864	\$282,897
Building Construction	\$554,938	\$738,999	\$1,808,361	\$3,261,865	\$4,625,493	\$2,902,758
Commodity-Wholesales-Retail	\$1,529,508	\$1,320,128	\$1,583,384	\$7,539,179	\$3,901,970	\$3,533,255
Development - Mineral Resources	\$667,911	\$661,699	\$1,069,298	\$979,727	\$1,662,412	\$973,412
Forestry	\$56,986	\$25,977	\$157,814	\$211,200	\$154,732	\$27,133
Government and Municipal	\$580,303	\$915,172	\$1,892,064	\$5,247,808	\$5,964,534	\$6,038,531
Manufacturing and Processing	\$1,775,571	\$1,856,297	\$1,519,283	\$6,755,898	\$6,975,696	\$6,436,194
Road Construction	\$636,643	\$278,293	\$76,446	\$486,384	\$261,388	\$386,456
Service Industry	\$652,558	\$456,734	\$369,505	\$1,313,415	\$879,711	\$3,662,873
Transportation, Warehousing	\$572,503	\$519,964	\$1,466,739	\$1,897,085	\$1,121,451	\$1,191,638
Utility Operations	\$500	\$0	\$138,974	\$135,396	\$54,487	\$76,925
Total	\$7,089,788	\$6,931,126	\$10,583,151	\$28,278,389	\$26,198,739	\$25,512,072

3.09 Sharing Experience Information to Promote Prevention

An unanswered question is whether the prevention "low hanging fruit" has been harvested to achieve the time loss injury rate reduction since 2002. As further reduction in the time loss injury rate becomes more difficult to achieve and the rate stabilizes, will further reduction increments take more penalizing and more sophisticated, difficult and costly strategies?

Another unanswered question is whether the decline in the injury rate has masked program cost increases in medical aid and elsewhere? Will stabilization, rather than decline, in the time loss injury rate compel the Board to shift its focus from prevention and ongoing prevention expenditures to ways to contain and reduce medical, wage loss and other costs?

The Board believes Saskatchewan and its workplaces need strong, aggressive measures to revitalize prevention performance. It proposes transferring to the Board the mandate for prevention education, training and support for workplace occupational safety and health committees from the Occupational Health and Safety Division of the Department of Labour, which is funded by assessment and investment revenue to the Board.

The Board does not propose it assume responsibility for regulation and enforcement at this time. The Board proposes this Committee recommend the establishment of a stakeholder committee composed of representatives of labour,

employers, the Department of Labour and the Board to study to whom the regulation making and enforcement mandate should be assigned to support a provincial goal of a reduced injury rate.

The Committee does not agree this is the time to revisit the recurring issue of the demarcation between the prevention role and jurisdiction of the Board and the Occupational Health and Safety Division. Together with employers and workers, they share the common mission to prevent employment related injuries and illness. With the recent launch and investment in *WorkSafe*, the commencement of claims cost experience rated assessments and the report of the Occupational Health and Safety Council to be released and acted on, this is not the time to open and pursue a debate on agency jurisdiction.

In addition, the Board has not prepared and presented a comprehensive and convincing business case, based on a measurable action plan, that a change in the roles, responsibilities, jurisdiction and authority of the Board and Division would improve prevention programs or result in healthier and safer workplaces.

Recommendation:

No change is to be made, at this time, to the legislated prevention roles and jurisdictions of the Board and the Occupational Health and Safety Division of the Department of Labour.

The Board and Division must consult and cooperate, as they have in their *WorkSafe* partnership. That consultation and cooperation must extend to all workers and employers covered by the workers' compensation program.

The Act recognizes that the information uniquely gathered and held by the Board is to be shared to further prevention.

The board may forward to the Occupational Health and Safety Division of the Department of Labour any information respecting the accident record of an employer or any class of employers that the board considers appropriate for the purpose of improving occupational health and safety.¹⁴⁰

All participants with responsibilities in prevention, which includes employers, workers, unions, workplace health and safety committees and prospective employees of an employer, must be fully informed to understand, target and coordinate efforts to prevent employment related injuries and illnesses in all industrial sectors and within all rate groups.

With the advent of claims cost experience rating assessments, each employer should and must know the experience of all other employers in its rate group. Knowledge about the time loss injury rate and claims cost experience of other employers will enable individual employers to assess and evaluate their

¹⁴⁰ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, s. 139.1.

performance and the appropriateness of the rate group to which they are assigned. It will enable employers in a rate group to determine the cooperative means they can offer fellow rate group employers to improve their performance and the competitive advantage and disadvantage they have because of their performance.

This information will allow all workers and employers to make informed decisions about the health and safety record of prospective employers, suppliers, contractors, etc.

Access to this information will enable parents to assess risks associated with their children accepting employment with an employer and enable school counsellors and teachers to assess and educate about the risks associated with career planning.

Recommendation:

Amend The Workers' Compensation General Regulations, 1985 to require the Board to annually publish on its website, by class and subclass, the name of each currently registered employer and, for each of the previous five years, the number of each employer's full-time equivalent employees, the number of each employer's accepted time loss claims and fatalities and, for each year for each employer, the types of injuries, time loss injury rate and, for experience rating, the employer's weighted loss ratio (the ratio of weighted costs to weighted premiums).

4. SEVERITY OF INJURY, MEDICAL AID AND REHABILITATION

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4.01 Injured Worker Profile

The severity of an individual's injury or illness has the greatest impact on the injured worker, his or her family and the community.

For the workers' compensation program, the severity of injuries and illnesses drives the long term costs of medical aid and compensation. The injured worker who recovers health and returns to work in two, three or four weeks does not need ongoing medical service payments and capitalized fund reserves for future compensation, medical aid, vocational rehabilitation, personal care, independence allowance and administration. That worker and family are not dependent on the Board to be there every day until death or age 65.

The severity of all employment related injury and illness is not obviously apparent at the time of injury. Severed and mangled limbs, burned bodies, lost sight, twisted spines, broken bones, disfigurement and other injuries can be readily apparent. Both the severity and exact time of onset of sprains, strains, damaged and diseased organs, tumours and back disc damage are less apparent. For brain and psychological injuries they are still less apparent.

All injuries take time to heal, even with aggressive therapy. Regardless of the expected norms for full recovery and ability to return to work, each individual worker does not present as the average. Some respond faster or slower than the norm. Many have ongoing stresses and family and other responsibilities they have to cope with while suffering; scheduling and visiting health care providers; taking drug therapy to which they can react physically in unexpected ways and that can affect their mood and personality; and trying to maintain some financial security for themselves and those dependent on them.

More severe injuries take more time for recovery. And there are delays in gaining access to medical treatment, diagnostic techniques, specialists and acute care services.

Natural phenomenon, barriers to ready access to medical service and organizational factors beyond the Board's control limit what the Board can do to speed up diagnosis, treatment, recovery and safe and sustained return to health and work.

Proper management of medical treatment is secondary prevention to minimize the severity and long term effects of an injury and illness that was not initially prevented.

Tragically, some injuries and illnesses are so severe the worker never fully recovers or regains health or the ability to return to work. Injured workers often suffer decreased life expectancy.

Equally tragic, for many workers their injury or illness is misdiagnosed or mistreated.¹⁰ Some workers are further injured in treatment and rehabilitation.

¹⁰ Linda F. Kohn, Janet M. Corrigan and Molla S. Donaldson, editors, Institute of Medicine, *To Err is Human: Building a Safer Health System*, National Academy Press, February 2000.

What may have appeared at the commencement of a claim to be a simple and straightforward injury becomes complex and inexplicable.

Sometimes, everyone involved absolves themselves of responsibility and the injured worker and his or her family are left to their own devices. Injured workers lose income. Some lose employment, houses, self-esteem, friends, spouses, families, Board support and the will to live. Some become addicted to pain relief medication or fall victim to weaknesses they were able to control when healthy.

Fig. 33: Former and New Act Long-Term Injured Worker Profile by Age (2003-2005)

Former Act Injured Workers		2003	2004	2005
Under 50 years of age		78	62	50
50 - 59		252	247	227
60 - 69		295	294	274
70 - 79		312	311	291
80 +		150	165	178
Total		1,087	1,079	1,020
New Act Injured Workers (Earnings Replacement > 2 yr)				
Under 50 years of age		693	748	754
50 - 59		616	689	712
60 - 69		332	366	372
70 - 79		1	0	1
Unknown		8	0	0
Total		1,650	1,803	1,839

The Board can make reciprocal agreements with other Canadian workers' compensation boards¹²⁷ and 718 workers receiving earnings replacement benefits from the Board reside outside Saskatchewan.

Fig. 34: Earnings Replacement Recipients outside Saskatchewan (2005)

BC	AB	MB	ON	QB	NB	NS	PE	NL	YK	NT	Inter-national	Total
193	295	89	72	13	4	8	2	12	3	2	25	718

Section 36 of the Act states:

- 36(1) Subject to the provisions of an agreement under section 34, where the worker or a dependant of the worker is entitled, by the law of the country or place in which the injury occurs, to compensation in respect of an injury, he shall elect whether he will claim compensation under the law of that country or place or under this Act.
- (2) Notice of an election pursuant to subsection (1) shall be given to the board within three months from the date of commencement of loss of earnings due to injury or, where death results, within three months from the date of death.
- (3) Notwithstanding subsection (2), the board may, either before or after the expiration of the time mentioned in subsection (2), extend the time for which a notice of election may be given.

¹²⁷ Government of Saskatchewan, *The Workers' Compensation Act*, S.S. 1979, W. 17.1, s. 34 and Saskatchewan Workers' Compensation Board, "Interjurisdictional Agreement on Workers' Compensation", Policy Manual, POI 12/2000.

- [4] Where a notice of election is not given pursuant to this section, the worker or his dependant is deemed to have elected to claim compensation under this Act.

The effect of subsection (4) is that if a worker is injured outside Saskatchewan in a place where he or she is entitled to compensation and no notice of election to claim compensation in Saskatchewan is given to the Saskatchewan Board, then it is to be assumed the worker elects to receive benefits under the Saskatchewan workers' compensation program, not the one in place where the injury occurred.

The Board proposes that the words "have elected to claim" be replaced with the words "have elected not to claim." The Board proposes this because, it says, the word "not" was inadvertently and erroneously dropped in 1974 when the new Act was enacted.¹¹⁷ The previous provision stated:

- 33(1) Subject to the provisions of any arrangements made under section 57, where, by the law of the country or place in which the accident happens, the workman or his dependents are entitled to compensation in respect of it they shall be bound to elect whether they will claim compensation under the law of that country or place or under this Act and to give notice of the election, and if the election is not made and notice given it shall be presumed that they have elected not to claim compensation under this Act.¹¹⁸ (*Emphasis added*)

The Board proposed this change to the 2001 Committee of Review and said, at that time, that it administered section 36(4) as if it read as proposed, namely "have elected not to claim." Since 1996, no claim has been denied because of this administrative approach or for failure to make a timely election. From 1996 to 2006, inclusive, fifty-five claims were disallowed. Thirteen of the fifty-five were made beyond three months. In no case was the claim disallowed because of the delay.

Fig. 35: Elections to Claim Benefits in Saskatchewan (1996-2006)

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Claims	133	108	126	122	113	134	129	123	135	138	139
Disallowed	6	3	7	2	8	5	6	5	6	4	3

The rational and integration of an election within three months in section 36(2) and notice of injury within six months in section 45(1)(b) has not been discerned.

Despite the logic of the Board's proposal, the Committee has not been able to determine the likely impact of the proposed change on outstanding or existing claims and the impact on workers having their claim accepted under the law in another jurisdiction. The Committee has concluded there is no urgency, in the absence of more information of the likely impact, to change a provision that has been in effect since 1974.

¹¹⁷ Government of Saskatchewan, *The Workers' Compensation Act, 1974*, c. 127, s. 33.

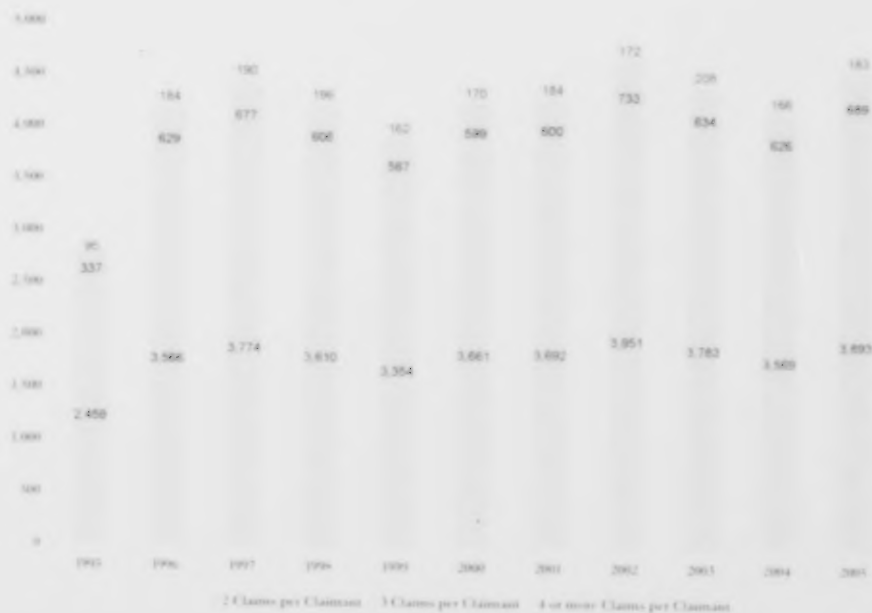
¹¹⁸ Government of Saskatchewan, *The Workmen's Compensation (Accident Fund) Act, 1971*, c. 68, s. 33.

Recommendation:

Section 36(4) is not to be amended as proposed by the Board or otherwise.

Each year, several workers report more than one claim to the Board.

Fig. 36: Repeat Claimants (1995-2005)



For the years 1995 to 2005, inclusive, the five rate codes with the highest average number of repeat claimants per year are in the following table.

Fig. 37: Top Five Industry Rate Groups with Repeat Claimants (1995-2005)

Rate Group	2 Claims/ Claimant	3 Claims/ Claimant	4 Claims / Claimant
Health Authorities, Hospitals, Care Homes (G2)	486.91	73.27	22.82
Processing Meat, Poultry and Fish (M72)	225.18	58.82	24.91
Machine Shops, Manufacturing (M92)	208.18	48.00	16.73
Transportation, Courier, Commercial Bus (T42)	191.73	31.45	6.46
Agricultural Equipment (M91)	171.36	42.09	15.18

4.02 Time Loss Duration - Measure of Severity of Injuries and Illness

In addition to the number of fatalities and permanent functional impairment injuries each year, the severity of workplace injuries and illness is measured by the average duration of cash compensation payments on accepted time loss claims. Longer duration is equated with overall higher severity and costs.

The number of calendar days for time lost from work is determined by the duration of wage loss benefit payments. The payments on all time loss claims reported in a year will not end (be settled) in that year. Claims reported toward the end of the year will not be settled until the following year, at the earliest. Cash compensation payments will continue for years or until age 65. Other benefits, such as independence allowance, will continue for life.

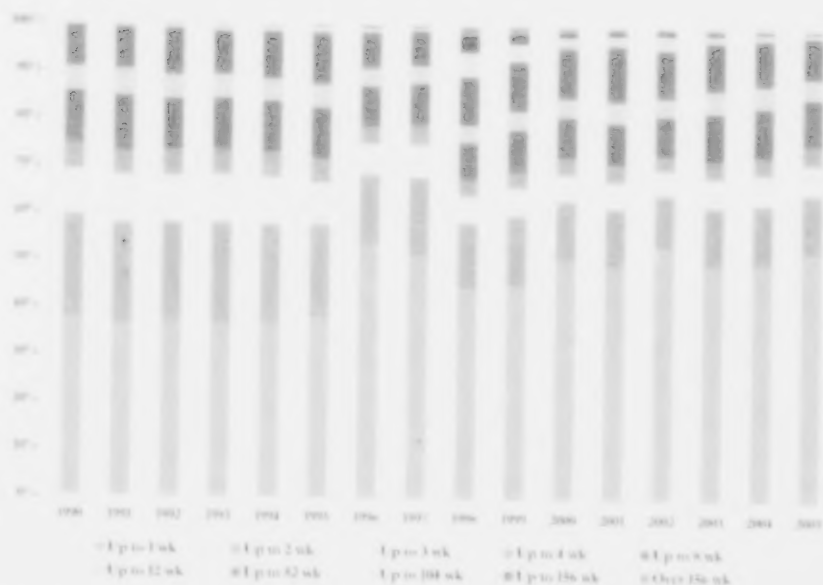
The overall average duration of accepted time loss claims rose in the 1990s but has declined since 2001. Today, in the Board's claims management process, claims of less than four weeks duration are generally managed by a different unit of employees than those with a duration longer than four weeks. The average duration of all claims less than four weeks in duration has been relatively constant since 1996. The average duration for claims longer than four weeks has decreased, but there is no definite downward trend throughout the period.

Fig. 38: Average Days Duration of Claims (1996-2005)

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
All Claims	21.40	22.20	23.90	24.90	25.80
Claims < 4 weeks	6.42	6.53	6.49	6.52	6.72
Claims > 4 weeks	81.50	81.97	84.56	86.54	86.66
	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
All Claims	27.60	25.40	25.00	23.20	21.60
Claims < 4 weeks	6.81	6.85	6.97	6.81	6.64
Claims > 4 weeks	89.78	82.46	81.39	79.97	77.97

Underlying these averages is the frequency distribution of the duration of settled time loss claims. Over 50% of the settled claims are for a period less than one week or seven days. For approximately 85%, the compensation paid is for less than eight weeks. For approximately 90%, it is less than twelve weeks.

Fig. 39: Duration Percentage Distribution of Settled Time Loss Claims (1990-2005)



While the percentage of settled claims that extended longer than three years has declined, the trend is that the percentage of time loss claims that have a duration more than five, seven or ten years is increasing.

Fig. 40: Percentage of Time Loss Claims Continuing after 5, 7 and 10 Years (1990-2005)

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
5 yrs or more	0.62%	0.71%	0.83%	0.83%	1.00%	0.89%	1.18%	1.18%	1.28%	1.06%
7 yrs or more	0.21%	0.27%	0.22%	0.33%	0.49%	0.43%	0.60%	0.53%	0.52%	0.56%
10 yrs or more	0.14%	0.09%	0.14%	0.14%	0.22%	0.20%	0.31%	0.19%	0.28%	0.23%

For comparisons among Canadian jurisdictions, the Association of Workers' Compensation Boards of Canada tracks the average composite duration of short-term disability before the injury has stabilized, plateaued or consolidated. Using the current year and four prior years, the composite average duration is the total days paid in the year for each of the five years divided by the number of time loss claims for each year. No data is available from Ontario for 2004, the latest year for which the calculation has been completed. Over the years, Saskatchewan has consistently had one of the lowest in Canada.

Fig. 41: Jurisdictional Comparison - Average Composite Duration of Claims (2004)



The Association of Workers' Compensation Boards of Canada reports the percentage of time loss claims receiving wage loss benefits at the end of two and six years to reflect the extent to which injured workers are unable to return to work in the longer term.

Fig. 42: Jurisdictional Comparison - % Receiving Wage Loss after 2 and 6 Years (2004)



4.03 Permanent Functional Impairment (PFI)

The Board has the authority to determine the existence, degree and permanence of a functional impairment resulting from an injury.¹⁴⁵ It must establish a rating schedule to be used to determine the extent of permanent functional impairment.¹⁴⁶

The Board has a published 1989 rating schedule that is used as a guide to rate permanent functional impairment.¹⁴⁷ It is a guide that has not significantly changed since 1980.¹⁴⁸

The Board's rating schedule is out of date, fails to reflect current medical knowledge and is not used by anyone else anywhere else. In contrast, in Saskatchewan, the permanent impairment rating schedule under *The Automobile Accident Insurance Act*¹⁴⁹ is regularly updated and kept current in *The Personal Injury Pension Benefits Regulations*.¹⁵⁰

The last Committee of Review recommended an amendment to section 67 to require the Board to use the current edition of the generally accepted clinical rating schedule used by North American workers' compensation programs and disability insurers, which is the *Guides to the Evaluation of Permanent Impairment* (American Medical Association Guidelines). Since 1980, there have been four editions of this guide, which is used by five provincial workers' compensation boards in Canada. Currently, it is in its 5th edition.¹⁵¹ This Guide includes a rating schedule for disfigurement.

Recommendation:

Amend section 67 to direct that the rating schedule to be applied is the current edition of the American Medical Association Guidelines.

A worker who has sustained a permanent functional impairment (PFI) is entitled to a one time, lump sum compensation award not less than \$2,200 and not more than \$45,200.¹⁵²

¹⁴⁵ Government of Saskatchewan, *The Workers' Compensation Act* (1975), c. W-17.1, ss. 22(1)(c) and (d).

¹⁴⁶ Government of Saskatchewan, *The Workers' Compensation Act* (1975), c. W-17.1, ss. 67(1).

¹⁴⁷ Saskatchewan Workers' Compensation Board, *Workers' Compensation Board of Saskatchewan Functional Impairment Rating Schedule For Evaluation*, January 1989, <http://www.wsboard.com/WCBPortal/ShowProperty/WCBResources/pdfs/PFI-Rating-Schedule.pdf> (January 2, 2007).

¹⁴⁸ Saskatchewan Workers' Compensation Board, *Workers' Compensation Board of Saskatchewan Functional Impairment Rating Schedule For Evaluation*, 1989.

¹⁴⁹ Government of Saskatchewan, *The Automobile Accident Insurance Act*, A-35.

¹⁵⁰ <http://www.qp.gov.sk.ca/documents/English/Statistics/Statistics/A35.pdf> (January 2, 2007).

¹⁵¹ Government of Saskatchewan, *The Personal Injury Pension Benefits Regulations*, A-35 Reg 3.

¹⁵² <http://www.qp.gov.sk.ca/documents/English/Regulations/Regulations/A35R3.pdf> (January 2, 2007).

¹⁵³ Gannar B.J. Anderson, Linda Vecchiarelli, Editors, *Guides to the Evaluation of Permanent Impairment*, 5th Edition, American Medical Association, November 2000.

¹⁵⁴ Government of Saskatchewan, *The Workers' Compensation Act* (1975), W-17.1, ss. 67(1.1).

By policy, the Board has decided awards for disfigurement will have a different minimum and maximum amount of \$500 and \$15,000 because disfigurement relates to the appearance of the body and not to loss of function. The Board made no change to the range for cosmetic permanent functional impairment awards when the minimum and maximum amounts for PFI awards were doubled in 2003, as recommended by the last Committee. Under the Board's disfigurement policy:

Operations staff is responsible for determining payments for disfigurement awards for the face, hands and neck, based on an examination of coloured photographs supplied by the worker, where the degree of disfigurement results in the maximum award provided by this policy. For awards for disfigurement to other parts of the body and to the face, hands and neck where the degree of disfigurement results in less than the maximum award, Operations staff shall consult with a Medical Consultant in determining the amount of the award. The Medical Consultant shall conduct an examination of coloured photographs or a visual examination of the worker, whichever the Medical Consultant deems necessary in the circumstances, and advise Operations staff of the degree of disfigurement.¹⁵³

Fig. 43: Cosmetic Permanent Functional Impairment Awards (1991-2005)

	<u>1991</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>
Claims	5	35	31	27	16	34	34	34
Average	\$3,717	\$3,361	\$3,652	\$1,450	\$2,709	\$2,211	\$2,019	\$1,313
Total	\$18,587	\$117,647	\$113,193	\$39,148	\$43,437	\$75,169	\$68,651	\$44,656

	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
Claims	24	26	22	23	14	13	27
Average	\$1,966	\$2,065	\$2,679	\$4,381	\$4,767	\$4,525	\$3,840
Total	\$47,180	\$53,687	\$58,927	\$100,758	\$66,738	\$58,828	\$103,692

Recommendation:

The Board rescind its Disfigurement Policy when the current edition of the American Medical Association Guidelines becomes the rating schedule to be applied.

The Board proposes an amendment to section 67 to resolve what it characterizes as an internal conflict in the language. Section 67 states:

- (1) Subject to subsection (1.1), the board shall establish a rating schedule which shall be applied in calculating the amount of an award for a permanent functional impairment provided for in that schedule arising out of an injury which is to be, at least \$1,100 and not more than \$22,600.

¹⁵³ Saskatchewan Workers' Compensation Board, "Disfigurement Awards", *Policy Manual*, POL 02/2004.

- (1.1) For the purposes of establishing a rating schedule pursuant to subsection (1) for the purposes of decisions of the board made on or after the coming into force of this subsection, the amount of an award provided for in that schedule must be not less than \$2,200 and not more than \$45,200.
- (2) **Repealed.** 1988-89, c.63, s.8.
- (3) In determining the amount of an award for permanent functional impairment payable to a worker, the minimum and maximum amounts in effect at the date of his injury are to be used.
- (4) Subsection (1) does not apply in respect of any worker who suffers a fatal injury.

The Board perceives a conflict between subsection (1.1) and (3) "in that subsection (1.1) applies to decisions of the WCB that are made on or after January 1, 2003 [the date subsection (1.1) came into force] while subsection (3) sets the date for determining the amount of the permanent functional impairment award as of the date of injury." The Board proposes: "To eliminate any confusion that may result from this conflict, it is suggested that subsection (3) be amended by replacing 'an award' with 'an award under subsection (1)'."

The Board reports there has been no confusion among its decision makers in applying section 67. For injuries prior to January 1, 2003, the amount awarded is from \$1,100 to \$22,600 even if the award is made after January 1, 2003 because those were the minimum and maximum amounts in effect at the date of injury. For injuries on or after January 1, 2003, the minimum and maximum in subsection (1.1) are used. There has been no proceeding in which there was a dispute over whether subsection (1.1) applied to injuries prior to January 1, 2003.

The Committee has concluded the language of section 67 is clear and well understood.

Recommendation:

Section 67(3) is not to be amended as proposed by the Board or otherwise.

How often a permanent functional impairment award is made as a percentage of time loss claims can be an indicator of the severity of injuries. The Saskatchewan trend since 1990 has been to a lower percentage.

Fig. 44: Percentage of Accepted Claims Awarded PFI Benefits (1990-2005)



The number and the distribution of the percentage of permanent functional impairment awards and the average PFI percentage rating over time can also be indicators of the severity of injuries and illness.

Fig. 45: Number and % Distribution of PFI Ratings (1990-2005)

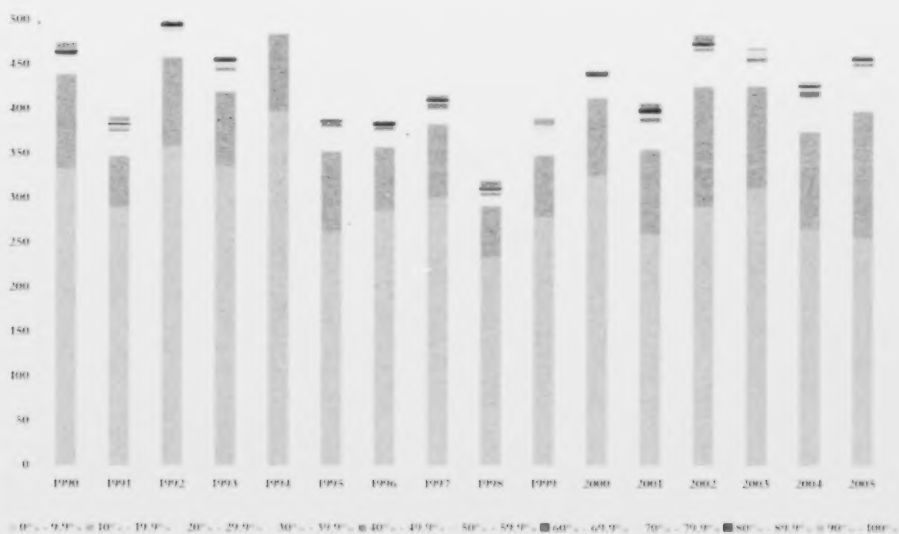
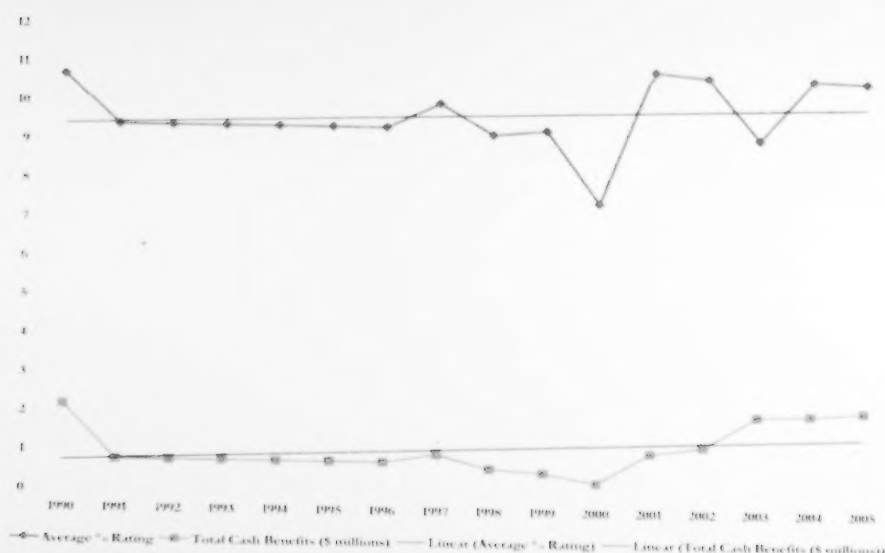


Fig. 46: Average Percentage PFI Rating and Total Annual Cash Benefits (\$m) (1990-2005)



The Association of Workers' Compensation Boards of Canada measures the estimated proportion of lost time injuries eventually awarded a PFI if current conditions continue into the future as an indicator of severity and trends.

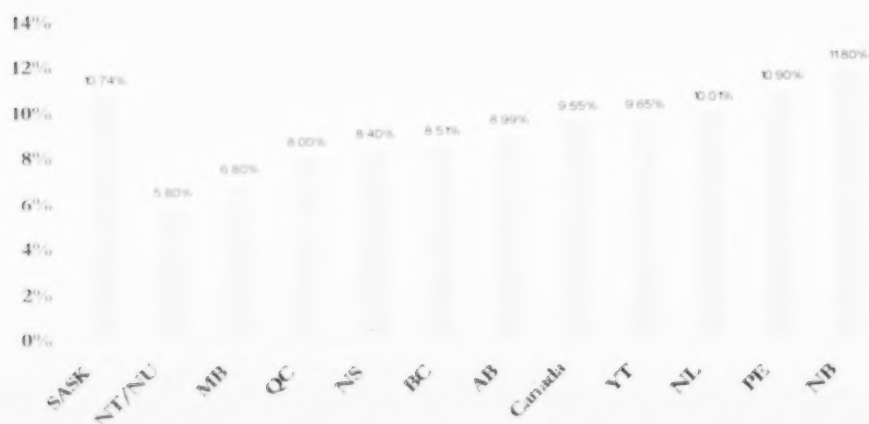
Fig. 47: Jurisdictional Comparison - Proportion of Claims Awarded PFI (2004)



The Association of Workers' Compensation Boards of Canada also measures the average percentage of new impairment awards. The cost impact of higher ratings is less in Saskatchewan than in provinces with pension systems in which the percentage of rating is the basis for pension benefit calculation. Under Saskatchewan's dual award system, the rating determines the amount of the lump

sum payment for non-economic loss. A 10% rating has special significance in Saskatchewan for entitlement to independence allowance.¹⁵⁴

Fig. 48: Jurisdictional Comparison - Average Impairment Rating (2004)



PFI ratings are done by physicians employed by the Board, not by specialists or by chiropractors for spine and musculoskeletal injuries.

Fig. 49: PFI Examinations Referred and Performed (1998-2005)

Examinations	1998	1999	2000	2001	2002	2003	2004	2005
Referred	217	230	211	163	198	**	**	274
Performed	141	164	146	122	155	174	184	219

** No record available

The Committee has concluded PFI examinations and ratings under the American Medical Association guidelines, frequently used by medical specialists and chiropractors, should be performed by a medical specialist or chiropractor familiar with the injured worker and his or her injury and medical history. In situations where there is no attending medical specialist or chiropractor, the examination and rating should be done by a medical specialist or chiropractor, familiar with the injured worker's class of injuries for which compensation is claimed, selected by the injured worker with the assistance of his or her attending physician.

The Committee is aware this is an erosion of the Board's exclusive jurisdiction. However, on this medical issue, the Committee has concluded a higher level of expertise and community confidence rests with treating medical specialists and

¹⁵⁴ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W 17.1, s. 67.1

chiropractors whose examinations and ratings are more likely to be accepted as independent, impartial and final.

Recommendation:

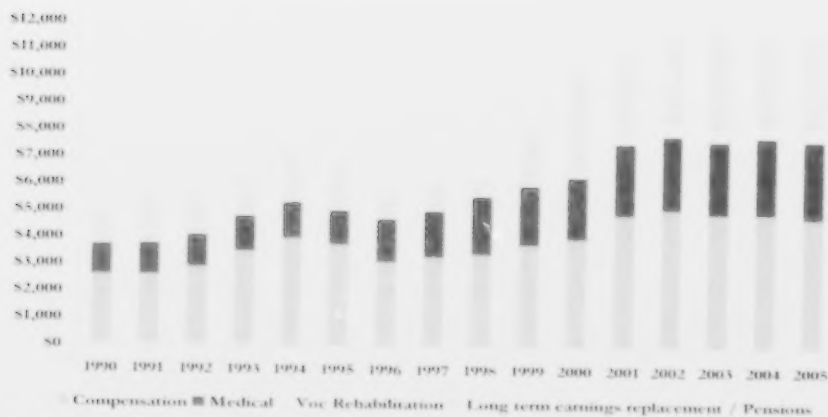
Amend section 67 to provide that a permanent functional impairment examination and rating under the American Medical Association guidelines is to be performed by a medical specialist or chiropractor familiar with the injured worker and his or her injury and medical history. In situations where there is no attending medical specialist or chiropractor, the examination and rating is to be done by a medical specialist or chiropractor, familiar with the injured worker's class of injuries for which compensation is claimed, who is selected by the injured worker in consultation with his or her attending physician.

4.04 Direct Financial Cost of Injuries and Illness

The component financial costs of a claim are: compensation, medical aid, vocational rehabilitation, and administration. All claims have an administration cost. Almost all claims have some medical costs. Fewer claims have cash compensation costs. And a smaller number have rehabilitation costs.

The distribution of costs per time loss claim, apart from administration and legislated payments for occupational health and safety and other obligations, is depicted in the following chart.

Fig. 50: Costs Per Time Loss Claim (1990 - 2005)

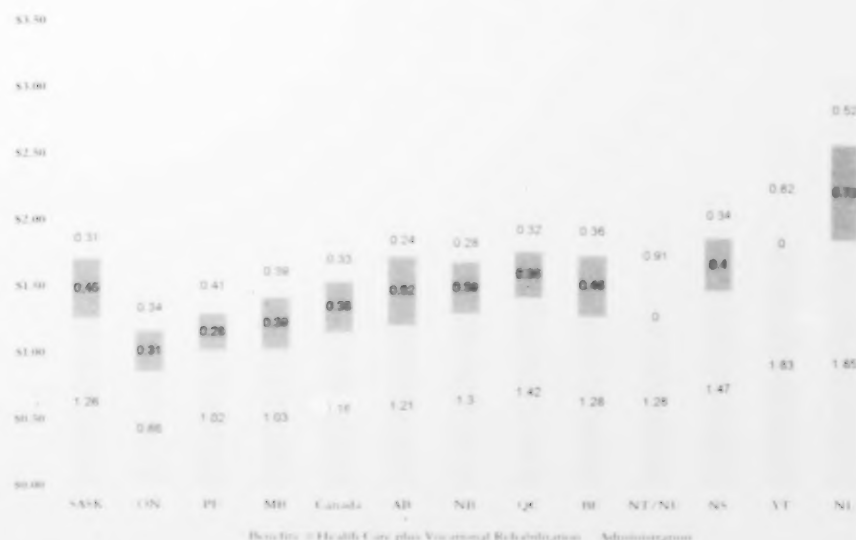


Note: "pensions" includes permanent partial disability, children's allowance,

clothing allowance, annuity, burial allowance, independence allowance and several other payments

The Association of Workers' Compensation Boards of Canada reports the cost of administration, current year benefits and health care plus vocational rehabilitation per \$100 of assessable payroll. The health care cost is not available for the Territories. The benefit cost can be a reflection of severity of injury if tracked over time and can point to trends, but inter-jurisdictional comparison must account for numerous variables.

Fig. 51: Jurisdictional Comparison – Cost Per \$100 Assessable Payroll (2004)



4.05 Medical Aid and Physical Rehabilitation

Injured workers are entitled to medical aid as follows:

- any medical aid that may be necessary as a result of the injury;
- any other treatment by a health care professional;
- any artificial member or apparatus that may be necessary as a result of the injury, and to have any artificial limbs and eyes and any surgical appliances such as belts, braces, supports and orthopaedic shoes, whether provided before or after this section comes into force, repaired, maintained and renewed when necessary by reason of accident or ordinary wear and tear;
- any transportation or sustenance occasioned by the medical aid.¹⁵³

¹⁵³ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, ss. 106(1).

Medical aid is furnished or arranged by the Board¹⁵⁶ and the Board is authorized to spend money for any medical aid provided by *The Workers' Compensation Act, 1979*; any "specialized treatment or other medical aid which the board may consider necessary and is not provided for by the Act"¹⁵⁷; and other special expenses as follows:

- (a) the replacement or repair of any artificial member or apparatus, including broken dentures, eye glasses, artificial eyes or artificial limbs when breakage is caused by an accident in the course of the worker's employment;
- (b) where in the opinion of the board it will be in the interest of the fund to do so, a special surgical operation or other special medical treatment for a worker;
- (c) the provision of treatment outside the province, with the written approval of the board, where, in the opinion of the board, the condition of an injured worker as a result of his injury requires treatment which cannot be obtained in the province.¹⁵⁸

The Board may also take any measures that it considers necessary or expedient:

- (a) to assist an injured worker in returning to work;
- (b) to assist in lessening or removing any handicap resulting from his injury; or
- (c) to encourage a dependent spouse of a deceased worker to become self-sufficient.¹⁵⁹

In supplying medical aid, the Board has adopted a proactive approach to the physical rehabilitation of injured workers through its Early Intervention Program initiated in 1996.¹⁶⁰

The Early Intervention Program (EIP) arose from concerns about access to the Injured Workers' Program at Wascana Rehabilitation Centre and the 1992 Committee of Review recognition of a need for a "comprehensive and aggressive" program with the objective to return injured workers to their former occupation or to some alternative suitable and available employment.¹⁶¹ This was to be done in the context of the treatment decisions being made by the worker's attending physician in consultation with the worker without intervention by the Board.¹⁶²

The Board adopted a time driven assessment and treatment approach to be accessible to workers closer to their homes. The intent is to identify injured workers potentially requiring early intervention; make referrals; facilitate and implement the intervention; and evaluate and follow-up.

¹⁵⁶ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, ss. 106(2).

¹⁵⁷ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, ss. 117(a).

¹⁵⁸ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, s. 113.

¹⁵⁹ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, s. 115.

¹⁶⁰ Saskatchewan Workers' Compensation Board, "Early Intervention Program", *Policy Manual*, PCH, 04/96.

¹⁶¹ *Report of the Workers' Compensation Act Review Committee, August 1992*, p. 7.

¹⁶² *Report of the Workers' Compensation Act Review Committee, August 1992*, p. 15.

Today, there are 28 Board approved secondary assessment teams in 10 communities and 19 tertiary teams in 7 communities. There are 11 mental health teams in 2 communities. There are 8 secondary assessment upper extremity teams in 2 communities. Eight of the teams do tertiary assessments. There are 26 secondary treatment centres in 11 communities and 19 tertiary centres in 8 communities.

By choice, the Board limits the number of treatment facilities in a community to ensure quality treatment by experienced providers. New facilities are accredited by the Board to be providers if an existing facility does not maintain quality standards or service levels.

The Board uses *Expected Recovery Time Tables*, updated in 2006 and published on its website,¹⁶³ and chronic disability risk factors, which are also published.¹⁶⁴ If there is an injury, which is not in the *Table*, the Board refers to other sources. The primary one is the *Medical Disability Advisor* by Presley-Reed.

The guidelines are used to enter an expected recovery date in an individual worker's claim file and to prompt case managers when that date is exceeded. The Board intends to automate the calculation and entry of expected recovery dates based on diagnostic categories. The system will then send prompts to case managers' work queues and generate reports for team leaders when expected recovery dates are exceeded.

An evaluation of the performance of this program, recommended by the last Committee of Review¹⁶⁵ was undertaken by the Board¹⁶⁶ and reviewed by a stakeholder advisory committee that now serves as a permanent Health Care Advisory Committee.¹⁶⁷ Performance standards against which the EIP program can be evaluated and reported are being developed.¹⁶⁸

The EIP embraces the "sports-medicine model"¹⁶⁹ developed for immediate, accurate and appropriate medical care of persons injured while engaged in physical activity. Primarily targeting musculoskeletal injuries, the rehabilitation

¹⁶³ Saskatchewan Workers' Compensation Board, *Disability Duration Guidelines*.

http://www.wcbask.com/book_health_care/page_cps_duration_guidelines.page (January 2, 2007).

¹⁶⁴ Saskatchewan Workers' Compensation Board, *Chronic Disability*, Fact Sheet.

<http://www.wcbask.com/WCBPortal/ShowProperty/WCBRepository/forms/Publications/publications/ta cSheets/chronicDisability.pdf?content> (January 2, 2007).

¹⁶⁵ *Saskatchewan Workers' Compensation Act Committee of Review 2001 Report*, p. 10.

¹⁶⁶ Saskatchewan Workers' Compensation Board, *Status of 2001 Committee of Review Recommendations*.

http://www.wcbask.com/WCBPortal/ShowProperty/WCBRepository/pdfs/cor_status03.pdf (January 2, 2007).

¹⁶⁷ EIP Steering Committee, *Evaluation of Saskatchewan Workers' Compensation Board Early Intervention Program (EIP)*, July 2005.

http://www.wcbask.com/WCBPortal/ShowProperty/WCBRepository/pdfs/EIPreport_summary.pdf (January 2, 2007).

¹⁶⁸ Saskatchewan Workers' Compensation Board, *Highlights of the Monthly Board Meeting of the Saskatchewan Workers' Compensation Board*, October 4, 2006.

<http://www.wcbask.com/WCBPortal/ShowProperty/WCBRepository/pdfs/BoardMinutes062006> (January 2, 2007).

¹⁶⁹ Jim Allvato, "The Sports Medicine Model of Care for Your Occupational Athlete", *Public Risk Magazine*, July 2003, p. 18-22.

goal is restoration of function without surgical intervention. The premise is that injured workers will return to work sooner if they perform exercise-based work-simulation.

The number of injured workers who are referred, complete treatment and are discharged with restrictions is another indicator of the severity of the employment related injuries.

Fig. 52: Early Intervention Program (1997-2005)

	1997	1998	1999	2000	2001	2002	2003	2004	2005
Claims Longer Than 4 Weeks	7,439	7,655	7,849	8,830	4,461	4,490	4,356	3,855	3,623
File Referrals to Board Medical Officers	5,677	4,707	4,932	4,847	4,891	5,353	5,876	6,507	6,581
Weeks Prior to Referral									
Secondary Treatment	18.75	21.27	22.19	22.00	15.01	15.28	14.53	13.90	13.57
Tertiary Treatment	24.01	31.91	35.33	37.70	33.01	33.96	35.91	32.08	35.80
Average for Both	19.95	24.81	27.69	29.00	24.17	25.03	25.31	23.45	25.50
Workers Seen by Assessment Team	1,129	1,577	1,471	1,580	2,073	1,542	1,746	1,732	1,580
As % of Claims > 4 Weeks	15%	21%	19%	18%	46%	34%	40%	45%	44%
Admissions to Treatment Centers	780	1,025	1,047	1,221	1,493	1,438	1,371	1,247	1,188
As % of Those Seen	69%	65%	71%	77%	72%	93%	79%	72%	75%
Average Treatment Days									
Secondary Treatment	31.41	33.54	35.69	34.52	34.86	46.05	44.91	41.15	37.27
Tertiary Treatment	46.16	45.81	44.48	45.93	46.65	54.00	51.70	48.39	46.47
Average for Both	34.87	37.65	39.37	39.69	48.95	50.72	48.24	44.83	42.13
Reported Capable of Returning to Work									
Secondary Treatment - Percentage	76%	84%	87%	85%	84%	91%	88%	85%	87%
Return to Pre-Injury Work	264	540	477	547	545	589	527	497	465
Discharge With Restrictions	19	33	30	27	49	44	42	49	30
Tertiary Treatment - Percentage	74%	70%	67%	66%	84%	84%	79%	82%	81%
Return to Pre-Injury Work	72	220	250	356	357	392	314	311	284
Discharge With Restrictions	13	59	75	114	215	243	143	224	216

The Committee heard concerns with the awareness and understanding of the EIP, the selection, timely assessment and referral of injured workers to the program and the quality of treatment, the role and the focus of the contracted program service providers.

The Committee heard from workers who suffered injuries in the physiotherapy clinics. They recounted an automatic, mechanistic application of the EIP steps

and process with adverse health consequences for the injured worker. In one worker's words, the aggressive sports-medicine philosophy was not the cautious approach his father taught him in his work, namely, "measure twice and cut once." Instead, it was hurt twice and measure later. Another said the experience: "Was no rodeo. It was hell."

While the Board pays for medical aid, as the 1992 Committee of Review said, it "has no right to intervene in the treatment plan."¹⁷⁰ In the history of the Board's involvement in the diagnosis, treatment and recovery of injured workers, there is a constant refrain from injured workers and their care providers that the Board overrules, ignores, discounts or challenges the opinions of the injured workers' treating physicians.

At one time, it was that the Board preferred the opinion of its Medical Officers who had not seen or treated the worker. Now it is that the Board gives greater weight and credibility to the opinion of physiotherapists and that their role under the sports-medicine model and EIP has ascended beyond their expertise.

The physiotherapists employed by service providers engaged by the Board are health care providers, but not the injured worker's chosen health care provider. No matter how much the Board has the interest of injured workers as its concern, the injured worker will view the physiotherapists as persons engaged and thrust upon him or her because the Board considers it is necessary or expedient to hasten recovery and shorten the duration of the time loss claim. For each individual injured worker, trust must be earned to have the physical pain and suffering necessarily associated with the treatment accepted as "good" pain for a "good" cause.

The Committee has concluded that too often in individual cases the Board's focus is on "claims management" not management of the individual workers' disability. Effective individual disability management is always responsive to the individual's circumstances; inclusive of the opinions and advice of the individual's health care providers; vigilant about the quality of care in rehabilitation; informed about the physical demands of the individual's work and activities of daily life; attentive to the individual's physical and medical limitations within the rehabilitation program; and quick to tailor "the program" to fit the individual, not compel the individual to take undue risks to fit the program.

When the Board refers and compels an injured worker to attend the Early Intervention Program, the Board's responsibility is to increase, not decrease, the frequency of communication with the worker and his or her health care providers. The Board, not the worker's physician or health care provider, is directing the assessment and rehabilitation measures as "necessary or expedient". The Board must not relinquish or delegate its responsibility or decision-making authority to the providers whose services it contracts and imposes on injured workers.

¹⁷⁰ *Report of the Workers' Compensation Act Review Committee August 1992*, p.15.

The Board must accept responsibility for new injuries and aggravation or acceleration of pre-existing injuries and conditions occasioned by the exercise based, work simulation activity it requires an injured worker to undertake through the Early Intervention Program.

The success of the Early Intervention Program is dependent upon collegial collaboration among the Board, the injured worker, the worker's health care providers and the provider whose services are contracted by the Board. This requires on-going communication, especially when the worker or his or her health care provider has concerns about the character, quality and intensity of the program the worker is compelled to pursue under threat of loss of compensation benefits.

The Board's Case Manager with his or her supporting team is the pivotal individual in the coordination of the overall management of an injured worker's disability and return to work. In many cases, there will not be anyone at the worker's workplace who is assigned, trained or able to engage in disability management and return to work for the employer. Disability management best practices and accommodation obligations and other issues are continuously evolving. The Board is best situated and suited to demonstrate and take leadership in individual cases.

The systematic, goal directed process of actively maximizing recovery and health and minimizing further deterioration, while minimizing the effect of impairment on an individual's ability to compete in the workplace, requires timely proactive and inclusive action by Case Managers.

A successfully managed rehabilitation care plan tailored for individual workers requires stakeholder education, effective continuous communication, performance monitoring and follow-up after return to work.

The Board must work with disparate corporate cultures, levels of education, commitment and resistance, disparate employer policies and procedures and varying levels of joint labour-management support.

Rehabilitating an injured worker to the optimum level of function and return to work with minimum risk to the worker or others requires collaboration to assess options, plan, coordinate, monitor and evaluate outcomes. Implementing rehabilitative care to a safe and successful return to productive and suitable work requires a clear plan properly communicated and implemented. It is more than early identification, assessment and compulsory referral to treatment. It is collaboration and support, not direction.

Recommendation:

The Board adopt a practice of having Case Managers assume responsibility for disability management by developing managed rehabilitation care plans in full collaboration with the injured worker and his or her health care provider and the employer; continuously communicating with the worker, employer, primary health care giver, specialists and any other stakeholder during the implementation and modification of the plan; and follow-up to evaluate the success of the plan after the worker returns to work.

A related communication issue is that there are times when an injured worker who complains to the Board or does not accept a Board direction about a matter is threatened with loss of cash compensation payments. If the injured worker becomes upset and aggressive then the injured worker is told he or she will have restricted, supervised or no further contact with the Board and a caution is placed on the worker's file. This part of the Board's practice is for the protection of the health and safety of Board employees, who were consulted on the development of the Board's policy.¹⁷¹

Fig. 53: Claimants or Employers with Cautions on Their Files (July 31, 2006)

Classification of Security	Workers	Employers
C1 - foul language	190	6
C2 - vocal or written threats	13	4
C3 - physically threatening	20	
C4 - physical/violent acts	10	
C5 - physical/violent acts, verbal threats and/or foul language, charges or injunction	16	
Total	249	10

The Board does not regularly review if the security classification assigned to an individual continues to be justified and appropriate, but will consider a request to remove a caution from an individual's file.

Recommendation:

The Board adopt a practice of periodic, scheduled review of cautionary security classifications on worker and employer files to determine if the individual continues to be a threat to the health and safety of Board employees at all or at the assigned classification level.

¹⁷¹ Saskatchewan Workers' Compensation Board, "Safety and Security - Workplace", ADM 05/2005.

Fig. 54: Medical Costs by Caregiver Type (2001-2005)

Caregiver Type	2001		2002		2003		2004		2005	
	Claims	Cost	Claims	Cost	Claims	Cost	Claims	Cost	Claims	Cost
Ambulance or Other Transportation	472	\$302,245	492	\$260,425	514	\$339,250	471	\$266,623	487	\$303,972
Assessment Teams & Functional Capacity	1,770	\$2,360,012	1,868	\$2,644,216	1,972	\$2,971,629	1,911	\$2,783,640	1,734	\$2,644,744
Audiologist/Speech Therapist	215	\$183,447	257	\$168,051	278	\$149,779	339	\$253,214	411	\$260,535
Chiropractor	3,810	\$1,107,719	4,173	\$1,286,611	4,115	\$1,239,906	3,883	\$1,229,528	4,082	\$1,269,734
Dental	262	\$221,950	219	\$196,347	231	\$225,292	261	\$263,442	207	\$277,890
Drugstore	4,185	\$1,318,000	4,672	\$1,891,769	4,769	\$2,200,632	4,642	\$2,550,093	4,422	\$2,635,187
Exercise/Conditioning Therapist	103	\$48,166	98	\$20,024	71	\$22,225	38	\$12,196	48	\$28,821
Hospitals, Public/Private Nursing Homes	14,841	\$7,832,734	16,347	\$8,318,957	16,146	\$8,061,783	15,378	\$8,944,573	14,018	\$8,958,922
Licensed Physicians	34,498	\$4,627,149	69,596	\$5,911,766	37,591	\$5,696,336	36,285	\$5,903,778	35,012	\$6,269,199
Massage Therapy	1,130	\$288,580	1,490	\$368,934	1,525	\$331,987	1,591	\$359,469	1,574	\$332,267
Medical Appliances	1,542	\$833,201	1,723	\$1,006,636	1,637	\$934,830	1,635	\$1,143,704	1,614	\$1,015,540
Medical Board	3	\$1,939	1	\$534	8	\$3,163	6	\$1,916	9	\$7,921
Occupational Therapist	24	\$18,002	34	\$21,834	50	\$27,043	46	\$22,767	53	\$29,815
Optometric	840	\$180,511	1,150	\$176,576	797	\$170,357	789	\$190,167	710	\$180,851
Out Of Province/Country - Medical	733	\$288,336	563	\$438,689	602	\$392,227	606	\$1,488,703	563	\$329,390
Personal Care/Nursing	0	\$78,670	0	\$96,213	0	\$64,618	0	\$63,634	0	\$60,896
Private Physiotherapy Provider	5,339	\$4,316,126	9,702	\$6,748,632	7,884	\$6,604,243	8,135	\$6,831,843	7,813	\$6,432,683
Psychologist	166	\$278,418	202	\$437,174	217	\$275,264	243	\$361,052	227	\$325,627
Secondary Treatment	755	\$2,917,742	931	\$3,404,071	796	\$3,100,613	757	\$2,711,021	664	\$2,394,707
Tertiary Treatment	667	\$3,754,481	941	\$5,113,246	847	\$4,393,030	865	\$4,434,293	770	\$4,176,157
X-Ray Services	144	\$1,076	593	\$220,465	928	\$389,643	596	\$229,158	482	\$183,637
Totals		\$30,958,504		\$38,731,170		\$37,593,850		\$40,044,814		\$38,118,495

5. ACCESSIBLE AND ADEQUATE BENEFITS

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5.01 No-fault, Indexed, Lost Earnings Replacement Cash Benefit to Age 65

When a worker suffers an employment related injury or illness, workers' compensation cash benefits will usually be the primary financial support for the worker and his or her family. A household's reliance on cash benefits will often be greater when there is a death.

Readily accessible, no-fault medical aid and cash benefits to replace lost earnings lessen some of the impact of injury and illness. Compensation for other losses available in the courts through fault-based litigation, such as pain and suffering, were given up as part of the trade-off for no-fault coverage.

The immunity from lawsuit employers have under workers' compensation legislation can avoid severe financial hardship for employers that can result from one successful lawsuit. The most recent successful lawsuit in Canada by an employee for negligent employer conduct that was not barred by a workers' compensation statute involved supervisor harassment that caused debilitating psychological injury. The employee was awarded \$250,000 for lost wages, \$600,000 for loss of future wages and \$125,000 for general damages.¹⁷²

To receive benefits, injuries must be reported¹⁷³ and benefits must be claimed.¹⁷⁴

Barriers adopted elsewhere to limit legitimate access to benefits have been squarely addressed in the Saskatchewan legislation. These barriers include no compensation during legislated waiting periods;¹⁷⁵ no compensation for aggravation of pre-existing conditions;¹⁷⁶ no compensation for aggravation caused by aging;¹⁷⁷ requiring the work injury to be the predominant or major or cause of the disability;¹⁷⁸ and compelling the production of objective medical evidence to establish a claim.¹⁷⁹

These barriers, often raised by private insurers and sometimes legislated as reforms in other jurisdictions, are most often driven by cost concerns rather than

¹⁷² *Auld v. Attorney General et al* 2006 BCSC 99, appeal dismissed 2006 BCCA 582.

¹⁷³ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, s. 52 and 45.

¹⁷⁴ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, s. 48.

¹⁷⁵ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, s. 32.

¹⁷⁶ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, s. 50.

¹⁷⁷ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, s. 50.

¹⁷⁸ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, ss. 2(k) and s. 22.

¹⁷⁹ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, s. 57.

concerns about the adequacy of benefits or the social consequences of employment related injury and illness.

The cash compensation to replace lost earnings must be adequate and equitable, but is not the same amount for each worker. The cash benefit does not compensate for earned benefits, such as dental or life insurance, pension contributions or accumulating paid leave based on attendance at work. An injured worker who receives a larger portion of total compensation for work in wages than benefits will receive more workers' compensation cash benefits for lost earnings than another injured worker who receives the same total compensation for work that is paid as lower wages and higher benefits.

This is because estimated "average weekly earnings" prior to injury or illness are used as the measure for a worker's earnings.¹⁸⁰ Gross wages are adjusted to deduct probable income taxes and probable Canada Pension Plan contributions and probable Employment Insurance premiums payable by the worker. In this way, the wage rate is reduced from gross to net, or after tax, earnings.

For workers injured since September 1, 1985, the cash compensation replacement rate is 90% of net earnings beyond the day of injury up to the maximum wage rate, which is also adjusted to deduct probable income taxes, Canada Pension Plan contributions and Employment Insurance premiums.

An individual worker's cash compensation benefits are indexed to prevent erosion by inflation.¹⁸¹ Cash benefits are paid as long as the loss of earnings continues or until age 65.¹⁸²

The annual indexing of benefits is subject to the maximum wage rate in effect at the time of an indexed increase. This cap or limitation was explicit in predecessor legislation¹⁸³, but is not explicit in section 69(1)(a), which states:

Calculation of the loss of earnings for the purposes of subsection 68(1) and sections 71 and 72 shall be based on the difference between:

- (a) the worker's average weekly earnings at the commencement of his loss of earnings resulting from the injury, increased annually by the percentage increase in the Consumer Price Index; and

It should be explicitly stated in the Act, rather than implicit,¹⁸⁴ that the indexed increases are subject to the maximum wage rate.

Recommendation:

Amend section 69(1)(a) to add the words "which amount shall not exceed the maximum wage rate then in effect" after the word "Index".

¹⁸⁰ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, s. 70.

¹⁸¹ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, s. 69.

¹⁸² Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, ss. 68(2).

¹⁸³ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, s. 69 (Assented to May 4, 1979).

¹⁸⁴ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, ss. 70(2).

There is active debate about eliminating mandatory retirement and its age-based discrimination.¹⁸⁵ When legislation was adopted to eliminate mandatory retirement in Ontario, the workers' compensation program was exempted.¹⁸⁶ Other Canadian jurisdictions that have eliminated mandatory retirement have made more general exceptions that encompass their workers' compensation program.

Currently, in Saskatchewan "where a worker is sixty-three years of age or more at the commencement of his loss of earnings resulting from an injury, the board may provide" cash compensation benefits "for a period of not more than two years following the date of the commencement of loss of earnings."¹⁸⁷

If mandatory retirement is eliminated through addressing age-based discrimination in human rights legislation or other means, persons who work beyond age 65 should not be denied the protections and benefits of the workers' compensation program. If the normal working life is expected to extend beyond age 65 because of increased health and life expectancy, labour market or other necessities or simply freedom of choice, then the implications for restricting benefits to age 65 and the assumed termination of benefits at age 65 for funding will have to be closely examined.

The Committee has not undertaken this examination because the Bill to amend *The Saskatchewan Human Rights Code*¹⁸⁸ that is currently before the Saskatchewan Legislative Assembly contains a general exemption section - "Nothing in sections 9 to 19 prohibits a distinction on the basis of age if that distinction is permitted or required by any Act or regulation in Saskatchewan."¹⁸⁹

Subsequent to the Bill being introduced, the Board confirmed with the Department of Justice that the proposed legislation preserves age distinctions in *The Workers' Compensation Act, 1979*. Nevertheless, to affirm and communicate the intent and to clarify the law for all workers, the Board asked the Committee to recommend amendments to subsections 68(2), 77.1, 83(4) and 98.1(1) to add a beginning phrase "Notwithstanding the provisions of The Saskatchewan Human Rights Code, the compensation" and to amend section 71 by substituting a beginning phrase "Notwithstanding subsection 68(2) or the provisions of The Saskatchewan Human Rights Code" in place of the existing phrase "Notwithstanding subsection 68(2)."

The Bill to amend the *Saskatchewan Human Rights Code* has not been passed by the Legislative Assembly. The timing of the Board's submission on this issue did not

¹⁸⁵ Government of Saskatchewan, *The Saskatchewan Human Rights Code Amendment Act, 2006*.

<http://www.legasssembly.sk.ca/bills/PDFs/bill%9.pdf> (January 2, 2007).

¹⁸⁶ Government of Ontario, the Human Rights Code, R.S.O. 1990, c. H.19, s. 15.

<http://www.cpubi.ca/ou/law/cr/cr/19/2006/028/whole.html> (January 2, 2007).

¹⁸⁷ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W 17.1, s. 71.

¹⁸⁸ Government of Saskatchewan, *The Saskatchewan Human Rights Code Amendment Act, 2006*.

<http://www.legasssembly.sk.ca/bills/PDFs/bill%9.pdf> (January 29, 2007).

¹⁸⁹ Government of Saskatchewan, *The Saskatchewan Human Rights Code Amendment Act, 2006*, ss. 2, 3.

<http://www.legasssembly.sk.ca/bills/PDFs/bill%9.pdf> (January 29, 2007).

allow the Committee adequate time to explore and analyse the implications of amending *The Workers' Compensation Act, 1979*, as proposed, which should also include subsection 98.1(3).

5.02 Timely First Payment and Employer Reporting

No Canadian jurisdiction pays compensation for the day of injury.¹⁹⁰ That is expressly the employer's responsibility in some jurisdictions, but not Saskatchewan.

Only two jurisdictions have periods of time after the date of injury during which neither the employer nor the workers' compensation program pays the injured worker - New Brunswick (3 days) and Nova Scotia (2 days).¹⁹¹

Only Quebec places the responsibility for payment on the employer for a period of time and requires the employer to claim reimbursement from the workers' compensation tribunal.¹⁹²

In an era when two parent families depend on two incomes, single parent families are common, household debt is high and pay day loan business is brisk, timely payment of compensation is expected and needed by injured workers. A missed paycheque when living from paycheque to paycheque is a major stress.

The Board measures and reports the time from injury to payment of cash compensation on accepted time loss claims as part of the scorecard it maintains and reports on its performance. The percentage of eligible injured workers who received payment from the Board within 14 days of the date of injury was up to 71% in 2005. It was 80% if the 14 days was measured from the date the injury was first reported to the Board.¹⁹³

The Association of Workers' Compensation Boards of Canada reports both the average number of calendar days from injury to first payment issued and the average number of calendar days from registration with the Board to first payment issued. No data was available in 2004 for Quebec.

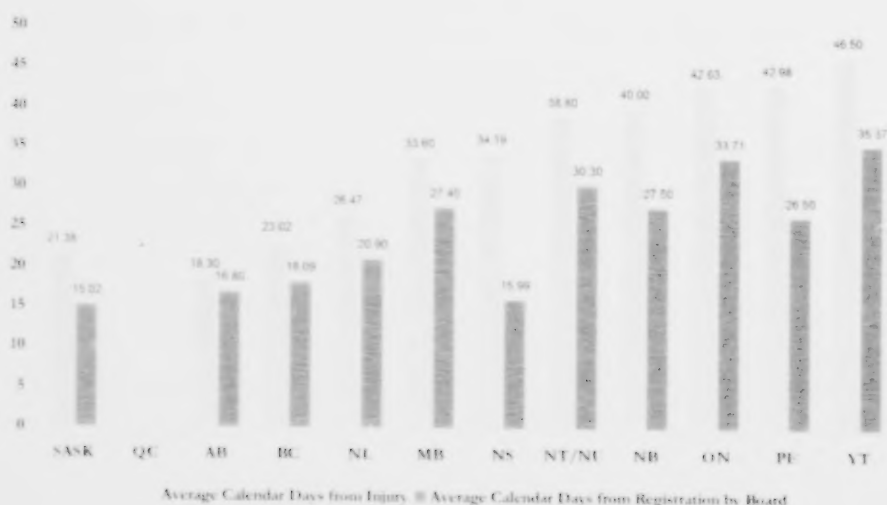
¹⁹⁰ Association of Workers' Compensation Boards of Canada, *Waiting Periods - Summary - 2006*, http://www.owcbc.org/english/board_pdfs/Benefits_Waiting_Periods.pdf (January 2, 2007) and Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W 17.1, s. 32.

¹⁹¹ Quebec requires the employer to pay to the injured worker 90% of his or her wages for the first 14 days of the injury/disability. If the injured worker is still unable to work after the 14 days, the Commission de la santé et de la sécurité du travail will commence payment of compensation. In addition, the wages paid by the employer will be reimbursed. In Prince Edward Island, the waiting period is equivalent to 60% of a week's average earnings. Once this threshold has been reached, compensation will be paid. If the injured worker is unable to return to work after four consecutive weeks the deducted wages is refunded to the worker.

¹⁹² Government of Quebec, *An Act Respecting Industrial Accidents and Occupational Diseases*, s. 60.

¹⁹³ Saskatchewan Workers' Compensation Board, *Report to the Stakeholders 2005*, p. 19.

Fig. 55: Jurisdictional Comparison - Timeliness of First Payment After Injury (2004)



Workers are to give the Board notice of injury and make a claim for compensation within six months. Any defect or inaccuracy in the notice or failure to give it within six months "does not bar the worker from compensation where the board considers that the claim for compensation is just and should be allowed."¹⁰³

The Board may pay compensation without receiving an application for compensation.¹⁰⁴ The Board will do this on the basis of a report from a health care provider or employer, but when there is wage loss the worker is asked to complete a notice of claim form.

Too much emphasis cannot be placed on the necessity of prompt reports to the Board by the physician, workman, employer and hospital. In many cases we have not received any report on an injured workman until weeks after the injury has occurred. This deprives the Board of its proper opportunity to follow the progress of the case and reduces it to a money disbursing machine.

WCB 1930 Annual Report, p. 15

The average employer injury reporting time has decreased from 12.1 days in 2003 to 11.1 days in 2004 to 9.1 days in 2005. The Board reports: "This is evidence that enforcement of reporting legislation combined with key internal initiatives are having an impact."¹⁰⁵

¹⁰³ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, s. 47.

¹⁰⁴ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, s. 48.

¹⁰⁵ Saskatchewan Workers' Compensation Board, *Report to Stakeholders 2005*, p. 16.

The Board believes it needs to have a more accessible and administratively effective means to enforce the employer's obligation to report. Section 52 of the Act states:

Each employer shall, within five days from the date he becomes aware of an injury which prevents a worker from earning full wages or which necessitates medical aid, notify the board in writing of:

- (a) the nature, cause and circumstances of the injury;
- (b) the time of the injury;
- (c) the name and address of the injured worker;
- (d) the place where the injury happened;
- (e) the name and address of any physician who attends the worker for his injury;
- (f) any further particulars of the injury or claim for compensation that the board may require.

Employer late reporting has been a persistent problem as reflected in the following table of the average number of firms in the rate group for the past ten years and the average periods of reporting.

Fig. 56: Employer Late Reporting 10 Year Average (1996-2005)

	Rate Code	Rate Code Description	Average # of Days	Average # of Firms Per Year
1	S14	Union	154	2
2	D21	Conventional Potash Mining, Refining	110	21
3	D11	Open Seam Mining	90	9
4	D61	Mining Exploration	66	13
5	S11	Legal Offices, Financial, Drafting	66	22
6	U31	Electric Systems	60	21
7	T61	Commercial Air Transportation	57	21
8	G51	Government of Saskatchewan & Departments	55	91
9	M31	Mfg, Pipeline Operations	54	23
10	F11	Conventional Logging Operations	52	21
11	D62	Underground Mining & Maintenance	51	16
12	D63	Diamond Drilling	49	7
13	F22	Planing, Sawing, Mills, Waferboard	49	52
14	S12	Offices, Professional	49	115
15	F31	Pulp & Paper Mills	47	6
16	U11	Telecommunications	45	7
17	G31	Cities, Towns, Villages, RMs	44	173
18	M33	Refineries & Upgrader	43	22
19	M42	Bakeries, Food Prep & Plg	43	41
20	T51	Operation of Railways	42	12
21	R11	Road Construction & Earthwork	40	212

	Rate Code	Rate Code Description	Average # of Days	Average # of Firms Per Year
22	M94	Iron & Steel Fabrication	38	53
23	S23	Hotels, Motels, Taxis	37	172
24	G12	School Divisions, Housing Authorities	37	115
25	G11	Universities & Regional Colleges	36	43
26	C62	Automotive Service Shops, Towing	35	341
27	A21	Farming & Ranching	34	29
28	S32	Service Clubs	34	99
29	B12	Residential Construction	34	329
30	M72	Processing Meat, Poultry & Fish	32	36
31	A31	Grain Elevators & Inland Terminals	32	23
32	G22	Health Authority, Hospitals, Care Homes	32	528
33	S41	Engineering, Testing & Surveying	32	44
34	S21	Hostels, Independent Services	32	124
35	C61	Automotive, Implement Sales & Service	31	435
36	F12	Mechanical Logging Operations	31	17
37	D32	Operation of Oilwells	31	37
38	C33	Wholesale, Chain Stores	30	148
39	C12	Light Commodity Marketing	30	160
40	S33	Caretaking, Park Authorities	30	78
41	A11	Light Ag Operations	29	99
42	C41	Co-operative Associations	29	78
43	C51	Lumber Yard, Builders Supplies	28	113
44	C32	Grocery, Department Store, Hardware	28	376
45	M62	Mills, Semi Medium Mfg	26	212
46	M91	Agricultural Equipment	25	108
47	T42	Transportation, Courier, Commercial Bus	25	404
48	B11	Construction Trades	25	288
49	M81	Metal Foundries & Mills	24	46
50	D51	Service Rigs & Water Well Drilling	22	73
51	M41	Dairy Products, Soft Drinks	21	12
52	D12	Mining Coal	20	9
53	F13	Log/Pulpwood Hauling	20	15
54	B13	Commercial, Industrial Construction	19	313
55	S22	Restaurants, Catering, Dry Cleaning	16	603

Effective July 1, 2005, the Board announced that employers who do not report a workplace injury within five days as required by the Act may be subject to prosecution.¹⁹⁷ This followed a call for action in 2004 by the Provincial Auditor¹⁹⁸; notice to the community by the Board's Chief Executive Officer in 2005¹⁹⁹; and other public announcements.

Employer failure to report is an offence punishable on summary conviction by a fine up to \$1,000. In 2006, two charges were laid under section 53, which states:

Any employer who contravenes section 52, unless he is excused by the board, is guilty of an offence and liable on summary conviction to a fine of not more than \$1,000 and shall, where the board orders, pay to the board any part of the amount of compensation and medical aid that the board awards for that injury.

The Board reports its experience is that summary conviction offences under the Act do not receive priority in the justice system and take an inordinate time and cost to pursue. From September 2004 to August 2006, the Board had an arrangement under which it shared and contributed to the funding of a Crown Counsel with dedicated time to prosecuting offences under *The Workers' Compensation Act, 1979*.

Five incidents of delayed injury reporting by employers that were sent by the Board to the Crown Counsel in February 2005 were not approved for charges. The Board began its communication about late reporting in mid-2005. In February 2006, charges were filed against the Saskatoon Regional Health Authority, which pled guilty in May 2006 and was fined \$1,300 for the two charges, including a 30% victim fines surcharge.

In the meantime, the special arrangement to fund a Crown Counsel dedicated time expired in April 2006. Board requests for charge approval against all other employers, except the Regina Qu'Appelle Regional Health Authority, were not approved. The charges against the Regina Qu'Appelle Regional Health Authority did not proceed.

The Saskatoon Regional Health Authority was again charged in July 2006 and pled guilty to two counts of failing to notify the Board of a workplace injury within the legislated time requirement. In December 2006, it was fined \$1,300 for the two charges, including a 30% victim fines surcharge.

As recent as January 2007, the Board has referred cases of late reporting for review and prosecution.

¹⁹⁷ Saskatchewan Workers' Compensation Board, *Press release for Late and Non-Reporting of Workplace Injuries*, News Release, June 9, 2005.

¹⁹⁸ Saskatchewan Provincial Auditor, Chapter 16—Workers' Compensation Board, 2004 Report, Volume 1.

¹⁹⁹ Saskatchewan Workers' Compensation Board, *Report on Year-Ends 2005*, p. 49.

The Board has never ordered an employer under section 53 to pay any part of the amount of compensation and medical aid the Board awards and pays for a late reported injury.

The Board proposes the enforcement mechanism for failure to comply with statutory obligations under the Act be changed to allow the Board to assess administrative penalties recoverable by the Board as a debt due to the Board. The Board proposes replacing section 178, which states: "The penalties imposed under the authority of this Act are recoverable upon summary conviction, and when collected shall be paid over to the board and shall form part of the fund", with a new section 115.1(2), as follows.

Overpayments [and Penalty Recovery]

115.1(1) Where compensation payments have been made by the board to a worker beyond the period of his loss of earning capacity or to a worker or dependant in an amount in excess of that to which he is entitled, the amount of the overpayment may be recovered by the board as a debt due the board.

[(2) Where a penalty has been imposed by an order of the board, the amount of the penalty may be recovered by the board as a debt due the board.]

In the case of late employer reporting, section 53 would be amended to state as follows:

Any employer who contravenes section 52, unless excused by the board, ~~is guilty of an offence and liable on summary conviction to a fine of not more than \$1,000~~ **[shall be liable to pay a penalty of not more than \$1,000 for each contravention,]** and shall, where the board orders, pay to the board any part of the amount of compensation and medical aid that the board awards for that injury.

The Board proposes the same approach to the following summary conviction offences:

<u>Section</u>	<u>Offence</u>	<u>Board Authority</u>	<u>Record of Usage</u>
53	Employer fails to submit injury report		Twice in 2006
55	Health care professional fails to make required report		None
109	Employer collects medical aid cost from worker	Order employer to reimburse worker triple the amount collected	None
125	Employer fails to submit annual payroll statement	Assess additional % of assessment as penalty or interest	No record of prosecutions. Regular usage of percentage penalty.

<u>Section</u>	<u>Offence</u>	<u>Board Authority</u>	<u>Record of Usage</u>
129	Person refuses Board access to premises to inspect		None
130	Person obstruct Board inspection of employer books and accounts		None
158	Security for assessments for temporary business		None
164	Employer deducts assessments for workers' wages		None
171	Unauthorized divulging of information by Board officer or other authorized person		None
177	Contravention of any regulation	Board leave required to prosecute	None

The Board does not propose any change affecting a penalty under sections 131, 152 and 153.

<u>Section</u>	<u>Offence</u>	<u>Board Authority</u>	<u>Record of Usage</u>
131	Inaccurate employer statement	Penalty equal to amount owed	None
152	Employer non-payment of assessment	Penalty equal to a percentage of the amount defaulted. The sum of the Bank of Canada rate for Oct 31 of the prior year and six percent.	Regular use of the percentage penalty. Approximately \$1 million per year collected.
153	Employer fails to report pay-roll or remit	Amount or capitalized value of compensation and medical aid paid; judicial restraining order from carrying on business	None

The Committee has concluded the Board should exercise its existing authority and powers to achieve compliance with statutory obligations before the Committee assesses whether, and in what manner, the existing authority and

powers are ineffective before rejecting the existing statutory scheme in favour of vesting the Board with the power to impose administrative penalties, as it proposes, or another means to enforce compliance with statutory obligations.

The Committee acknowledges there might be conflicting legal opinions about whether a summary conviction is a condition precedent to the Board making an order under section 53 and has concluded this uncertainty should be resolved.

Recommendation:

Amend section 53 to clarify the Board may make an order independent of any summary conviction that an employer pay any part of the amount of compensation and medical aid that the Board awards for a late reported injury and that the amount may be collected by the Board as an additional assessment payable by the employer.

5.03 Occupational Diseases and Psychological Disorders

An occupational disease is a "disease or disorder that arises out of, and in the course of, employment" as a result of causes or conditions peculiar or characteristic of a particular trade, occupation or industry or peculiar to a particular employment.²⁰⁰ The Board has a policy setting general adjudication guidelines for occupational disease claims²⁰¹ and specific guidelines for the following diseases: allergies, respiratory diseases, dermatitis, cardiac conditions, asbestos related cancer, mercury poisoning, repetitive strain, and Raynaud's Phenomenon. These and new policies must be continuously updated and adopted.

Occupational diseases are compensated the same as any injury. A disease resulting from a compensable injury, such as degenerative disc disease, arthritis or stress is employment related and compensable. Effects of medication to treat an employment related injury or illness will also be compensable. There is a clear line of causation from that secondary effect to the employment related injury or illness.

Like all other income continuity and medical aid programs, the workers' compensation program will sometimes be responsible for the consequences suffered by workers because of misdiagnosis, incorrect or delayed treatment and prescription of drugs by health care providers.

²⁰⁰ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, ss. 2(f,2).

²⁰¹ Saskatchewan Workers' Compensation Board, "Injuries - Occupational Disease", *Policy Manual*, POB-11/2003.

A distinguishing feature of occupational diseases is that timely, initial adjudication of compensation claims requires specialized knowledge and uniform direction through up-to-date policies that incorporate the most current medical and epidemiological knowledge.

The wide variety of occupational diseases is evident from the 29 diagnostic descriptions in the Board's statistical description of occupational diseases. In effect, this list serves as a schedule of occupational diseases recognized to date by the Board.

The incident of occupational disease is reflected in the 17,881 reported claims from January 1997 to June 2006, of which 12,444 or 69.6% were accepted.²⁰² The data by disease and disease sub-category are in Appendix 1.

It is difficult to prove that an individual's disease, particularly those with gradual onset and long latency periods, is employment related. Certain diseases are commonly known to be a result of exposure to substances in certain occupations. For example, extended exposure to mercury, once used to cure felt used in making hats, probably caused neurological damage and an altered mental state. This is likely the root of the expression "mad as a hatter."

When epidemiological research concludes a disease is more likely than not to be the result of employment in a specific occupation, the causation is deemed or presumed to have been the cause. This approach was used as early as 1877 in Switzerland.²⁰³ The presumption can be rebutted in an individual case, but the worker with the disease has an absolute entitlement to compensation without having to prove that employment was the cause of the disease.

A presumptive standard for an occupational disease, like a policy directive, establishes an institutional memory in areas of highly specialized scientific knowledge; assures benefits for workers; produces administrative convenience and consistency; and can bring attention to, and create prevention responsibilities for, recognized workplace hazards.

Since 2001, several jurisdictions in North America have adopted a presumptive approach to occupational diseases for fire fighters. Several had legislated presumptions prior to 2001.

In 2003, the Saskatchewan Legislative Assembly amended the Act to include a new section 29.1 that listed five diseases that are to be presumed to be occupational diseases, "the dominant cause of which is the employment as a fire fighter, unless the contrary is shown", when suffered by certain full-time fire fighters. In 2005, the Legislative Assembly amended the Act to add four more diseases and heart injury within twenty four hours following attendance at an

²⁰² Saskatchewan Workers' Compensation Board, Occupational Disease Statistics, http://www.wcbask.com/WCBPortal/appmanager/WCBPortal/WCB2?_nplh=true&_pageLabel=pageStatistics (January 2, 2007).

²⁰³ Peter S. Barth, et al, *Workers' Compensation and Work-Related Illness and Diseases* (1980, MIT Press), p. 2.

emergency response.²⁰⁴ In several jurisdictions, like in Saskatchewan, the presumption does not extend to volunteer fire fighters, as it does in Manitoba.²⁰⁵

After consultation with the Board, the Cabinet made regulations prescribing minimum periods of employment before the presumption will apply and minimum periods for which a worker has to have been a non-smoker before the presumption applies in the case of primary site lung cancer.²⁰⁶ These regulations were made in March 2006. Since 2003, the Board has accepted nineteen claims based on this presumption.

The etiology of a disease can be hard to establish. Many diseases result from multiple causes and care is exercised that the workers' compensation program is not a general sick pay plan. At the same time, common diseases, such as influenza, can be caused by employment because they were contracted while caring for or teaching people. Other diseases, such as Hepatitis C and HIV, can be contracted in the course of employment, although not arising out of the nature of the employment, if contracted from a fellow employee at work. Because it is contracted in the course of employment, it is presumed to have arisen from employment under section 29, discussed earlier in this report.²⁰⁷

At a time when there is concern and preparation for a low risk, high severity human influenza pandemic,²⁰⁸ the Board must be aware and prepared for the risks to the workers' compensation program and its administration if the workers of Saskatchewan suffer a pandemic. As there was with Severe Acute Respiratory Syndrome (SARS) in Ontario, there will be issues over entitlement to benefits and when the disease is to be accepted as arising out of and in the course of employment. The Board's employees will not be immune and the Board will need to respond quickly with its business continuity and premises decontamination plan to maintain some level of services for workers and employers.

Some of the most difficult occupational diseases for workers, employers and the Board are psychological diseases. Mental health illness changes the reliability of processes and procedures for gathering information and communication with the injured worker. It places a greater urgency on early adjudication. A prolonged investigation and adjudication process can exacerbate mental illness and delay or impede recovery. The Board implicitly recognizes this in its bridging program that provides for stress counselling to cope with adverse Board decisions.²⁰⁹

²⁰⁴ Government of Saskatchewan, *The Workers' Compensation Amendment Act, 2003*, Bill 18, *The Workers' Compensation Amendment Act, 2005*, Bill 25.

²⁰⁵ Government of Manitoba, *The Workers' Compensation Amendment Act*, Bill 25, <http://web2.gov.mb.ca/bills/38/3/1025e.php> (January 2, 2007).

²⁰⁶ Government of Saskatchewan, *The Workers' Compensation General Regulations, 1987*, c. W 17.1 Reg 1, s. 22.1.

²⁰⁷ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W 17.1, s. 29.

²⁰⁸ The current concern is with the H5N1 avian flu virus spreading from human to human.

²⁰⁹ Saskatchewan Workers' Compensation Board, "Bridging Program", *Procedure Manual*, PRC 11/2000.

The Board characterizes psychological disease under four diagnostic descriptions – (1) anxiety, stress, neurotic disorders unspecified (uns), (2) post-traumatic stress, (3) panic disorder and (4) anxiety, stress, neurotic disorder not elsewhere specified (nes).²¹⁰

Fig. 57: Psychological Injury Claims (1996-2005)

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Reported	187	144	167	180	157	177	139	183	196	199
Accepted	60	49	74	74	78	87	63	114	90	99
Acceptance %	32.09%	34.03%	44.31%	41.11%	49.68%	49.15%	45.32%	62.30%	45.92%	49.75%
Accepted Time Loss	57	44	67	66	71	77	58	102	80	89
Average Duration (Days)	165.08	107.25	198.54	170.92	116.47	145.51	203.28	97.83	116.08	66.63
Accepted No Time Loss	3	5	7	8	7	10	5	12	10	10
Disallowed	127	95	93	106	79	90	76	69	106	100

There are numerous traumatic and non-traumatic events and circumstances that can cause employment related psychological injury, including harassment - any objectionable conduct, comment or display - which is recognized as a workplace health risk in *The Occupational Health and Safety Act, 1993*.²¹¹ A worker subjected to the workplace hazard of harassment, including bullying, can suffer diagnosable psychological injury as well as physiological conditions.

The Board has two stress policies. One for federal government employees under the *Government Employees Compensation Act* adopted in 2001²¹² and a separate policy applicable to all other workers adopted in 1992 and amended in 1996.²¹³ The Board also acknowledges emotional stress requiring assistance can accompany any traumatic injury.²¹⁴

The Committee has concluded it is past overdue that the Board updates its policies on psychological injuries, and stress in particular, to reflect current scientific, medical and occupational health and safety knowledge; to ensure thorough, but expeditious, investigation and adjudication; and to provide prompt and appropriate medical aid and rehabilitation.

²¹⁰ Association of Workers' Compensation Boards of Canada, *National Injuries Statistics Program*.

²¹¹ Government of Saskatchewan, *The Occupational Health and Safety Act, 1993*, c. O-1.1.

<http://www.wip.220v.sk.ca/documents/English/Statistics/Statistics0101.pdf> (January 2, 2007).

²¹² Saskatchewan Workers' Compensation Board, "Stress Claims, Federal Government Employees (GECA)", *Policy Manual*, POI 01/2001.

²¹³ Saskatchewan Workers' Compensation Board, "Stress Claims", *Policy Manual*, POI 02/92.

²¹⁴ Saskatchewan Workers' Compensation Board, "Stress Claims", *Policy Manual*, POI 11/2001.

Recommendation:

The Board review, revise and update its policies on psychological injury and stress, in particular, and adopts a new policy or policies within one year.

Humans have a natural circadian rhythm that changes through their life as an infant, teenager, a young ad. lt, middle age adult and elder. Each has different natural awake and sleep cycles.

Today, more workers are required to work rotating, afternoon, evening and night shifts in a society where workplace shifts commonly run 24 hours a day, seven days a week. It is estimated over 30% of the working population have rotating, afternoon, evening or night shifts.²¹⁵

Shiftwork disruption in the natural circadian rhythm can have physical and psychological effects and shiftworkers can experience different responses to medication than others working regular day shifts. Some workers quickly learn they cannot work shift work. Others seem to adapt well for years despite the fatigue that usually accompanies shiftwork.

Shiftworkers often experience sleep disorders,²¹⁶ gastrointestinal²¹⁷, cardiovascular²¹⁸ and psychological²¹⁹ problems, diabetes²²⁰, menstrual disorders and other effects on women²²¹.

²¹⁵ Statistics Canada, "Shift work and health", *Health Reports*, vol. 13, No. 4, July 2002.

²¹⁶ Canadian Centre for Occupational Health and Safety, Work Schedules – Rotational Shiftwork, http://www.ccohs.ca/oshanswers/work_schedules/shiftwrk.html (January 2, 2007).

²¹⁷ Statistics Canada, "Shift work and health", *Health Reports*, vol. 13, No. 4, July 2002.

²¹⁸ European Foundation for the Improvement of Living and Working Conditions, "Shiftwork and Health", best 1/2000 *European Studies on Time*, p. 21.

²¹⁹ European Foundation for the Improvement of Living and Working Conditions, "Shiftwork and Health", best 1/2000 *European Studies on Time*, p. 25.

²²⁰ European Foundation for the Improvement of Living and Working Conditions, "Shiftwork and Health", best 1/2000 *European Studies on Time*, p. 31.

²²¹ European Foundation for the Improvement of Living and Working Conditions, "Shiftwork and Health", best 1/2000 *European Studies on Time*, p. 23.

Fig. 58: Potential Contraindications for Shiftwork

<u>Condition</u>	<u>Examples/Considerations</u>
Gastrointestinal disorders	Irritable bowel syndrome, indigestion, heartburn, stomach ache, peptic ulcers
Diabetes	Potential disruption of dietary and pharmacological control due to irregular timing of meals and medication dosing
Epilepsy	Increased frequency of seizures due to sleep deprivation
Cardiovascular disease	Additional risk factor for cardiovascular disease
Psychological problems	Chronic fatigue, depression, anxiety, nervousness
Sleep disorders	De-synchronization of sleep/wake rhythm, disturbance of both quality and quantity of sleep, poor daytime environmental conditions for sleeping
Reproductive dysfunction	Potential risk factor for preterm birth, miscarriage, lower pregnancy rates, irregular menstrual cycles

The health risk of shiftwork is recognized in *The Occupational Safety and Health Act, 1993*.²²² It has been examined by other workers' compensation boards.²²³

Clinical intolerance for shiftwork is sometimes called Shiftwork Maladaptation Syndrome. This term is used to describe the "the typical constellation of signs and symptoms seen in shiftwork intolerant workers."²²⁴

At this time, there is an emerging medical understanding of the pathological manifestations that accompany difficulty adapting to rotating shiftwork over an extended period of time and its interaction with aging. While there is not yet an accepted scientifically rigorous definition of a distinct condition called Shiftwork Maladaptation Syndrome, there is extensive research on shiftwork and its accompanying risk for heart disease and other conditions and the occupational safety and health risks associated with work schedules.²²⁵ The Board needs to investigate, anticipate and prepare for a claim for compensation for this and related conditions.

Recommendation:

The Board research the effects of shiftwork when developing, interpreting and applying its policies and programs.

²²² Government of Saskatchewan, *The Occupational Health and Safety Act, 1993*, c. C-4.1, s. 82.

²²³ *Michelin North America (Canada) Inc. v. Nova Scotia (Workers' Compensation Board)*, 2002 NSCA 166.

²²⁴ Scott, Allene MD, *Shift Work Hazards*.

<http://www.dcmsonline.org/pax-medicine/2001journals/April2001/shiftwork.htm> (January 29, 2007).

²²⁵ National Institute for Occupational Health and Safety, *Work Schedules: Shift Work and Long Work Hours*, <http://www.cdc.gov/niosh/topics/workschedules/> (January 29, 2007).

5.04 Gross Earnings Minus "Probable Deductions" (CPP and EI)

Cash benefits are paid to compensate for loss of "earnings", which the Board must determine.²²⁶

When the calculation of the compensation cash benefit to be paid to replace lost earnings was changed from 75% of gross earnings to 90% of net earnings in 1985,²²⁷ it became necessary to use an easily administered method to quickly calculate net earnings without delaying payment until detailed information is received on each reported time loss claim from workers and employers.

Earnings²²⁸ are the worker's gross earnings from employment minus the "probable" deductions for income tax payable, Canada Pension Plan contributions and unemployment insurance premiums, now properly referred to as "employment" insurance, which are deducted each pay period from all workers' gross wages.

The probable income tax payable is to be calculated "by using only the worker's earnings from employment as his or her income, and using only the worker's basic personal exemption, exemption for dependants and employment-related tax credits, as at the date of the worker's injury and each anniversary date, as the worker's deductions."²²⁹ The Board produces and publishes an annual table of earnings for calculating net earnings.²³⁰ Through the tables, the Board reduces the probable income tax to account for any tax credits such as child care or support or for deductions for dependents.

Some Canadian jurisdictions provide for probable income tax deductions based on single or married status²³¹ or for minimum compensation amounts assume the injured worker is married with dependents.²³¹

The standardized calculation approach does not subtract any probable deductions for pension plan contributions, union dues or other reasons. For ease of administration, a standardized approach does not adjust deductions to account for all individual circumstances.

Both Employment Insurance and the Canada Pension Plan have maximum annual earnings for insurable and pensionable earnings. The impact of not making contributions while receiving compensation cash benefits has disparate

²²⁶ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, ss. 68(1).

²²⁷ Government of Saskatchewan, *The Workers' Compensation Amendment Act*, 1985 (September 1, 1985); *Report of the Workers' Compensation Act Review Committee*, June 1982, p. 2.

²²⁸ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, ss. 68(3)(b)(i).

²²⁹ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, ss. 68(4). Saskatchewan Workers' Compensation Board, "Calculation of Net Compensation Payable", *Procedures Manual*, PRO 51/2005, <http://www.wcsask.com/WCBPortal/ShowProperty/WCBRepository/pdfs/PolicyManual> (January 2, 2007).

²³⁰ New Brunswick, Newfoundland and Labrador, Northwest Territories/Nunavut, and Quebec.

²³¹ Quebec.

effects for injured workers depending on the duration of their absence from work, their pattern of work, their annual earnings and other factors. Similarly, the total annual employer contributions will be affected differently by interruption in individual employee absences due to employment related injury or illness.

Cash compensation benefits to replace loss of earnings are not taxable.²³² They are not pensionable earnings on which a worker can make contributions to the Canada Pension Plan.²³³ They are not earnings from insurable employment that are subject to Employment Insurance premiums.²³⁴

The Act needs to be updated to refer to "employment" insurance premiums, not "unemployment" insurance premiums.

Recommendation:

Amend section 68(3)(b)(iii) to replace the word "unemployment" with "employment."

The "probable" deductions subtracted from gross earnings are not kept by the Board nor remitted as income tax, Canada Pension Plan contributions or Employment Insurance premiums.

Subtracting probable deductions from gross earnings is a simplified administrative approach to easily determine the injured worker's likely net earnings. It is an administrative formula to approximate the injured worker's pre-injury take home pay.

To explain the calculation to each recipient of cash benefits, the Board issues a statement with each compensation payment by electronic fund transfer or cheque. The statement lists the claim number, period of payment, reason for each payment, total amount of entitlement, any overpayment deductions and the amount being paid.

5.05 "Average Weekly Earnings" - Initial, 26 Week and Indexing

Because cash compensation benefits are calculated on the basis of weekly earnings, it is necessary to calculate a worker's weekly loss of earnings. Again, because it is a no-fault system there has to be ease of administration for prompt payment.

²³² Government of Canada, *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), ss. 110(1)(f)(ii), <http://www.cra-arc.gc.ca/inf/inf/1-3-31/> (January 2, 2007).

²³³ Canada Revenue Agency, Canada Pension Plan.

<http://www.cra-arc.gc.ca/tax/business/topics/payroll/calculating/cpp/norsubject-e.html> (January 2, 2007).

²³⁴ Canada Revenue Agency, *Employers' Guide - Payroll Deductions and Remittances*, p. 16.

http://www.cra-arc.gc.ca/1/pub/tp/13001/13001_06e.pdf (January 2, 2007).

On acceptance of a time loss claim, the Board calculates the worker's "average weekly earnings", which is the greater of:

- (a) one fifty-second of the worker's gross earnings for a period of 12 months immediately preceding the commencement of the loss of earnings as a result of the injury; and
- (b) the rate of daily, weekly, monthly or other regular gross earnings that the worker was receiving at the commencement of the loss of earnings as a result of the injury.²³⁵

Somewhat confusingly, this is referred to as the "average weekly earnings", rather than "gross weekly earnings", because it does not account for probable deductions. As proposed by the Board, to help make the scheme more understandable, this gross wage calculation should be identified by using the word "gross."

Recommendations:

Amend section 70 to replace the words "average weekly earnings" with "gross weekly earnings."

Amend section 68(3)(b) to replace the words "gross earnings" with "gross weekly earnings."

Amend section 69(1)(a) to replace the words "worker's average weekly earnings" with "worker's gross weekly earnings."

Amend section 69(1)(b) to replace the word "earnings" with "gross weekly earnings."

This gross amount must not include employer payments "to cover any special expenses."²³⁶ It cannot exceed one fifty-second of the maximum wage rate.²³⁷

For full-time, regularly employed workers, the calculation can be relatively straightforward, but is also an averaging that does not account for all benefits and other forms of remuneration.

For ease of administration and because it is no-fault, unlike the highly individualized tort system based on fault, the workers' compensation program does not prohibit or set-off from cash compensation any supplemental income or top-up payments employers choose or agree to make to injured workers.

All injured workers do not have regular, full-time employment or have not been available for employment for the twelve months preceding the commencement of loss of earnings. For some workers, the method of calculating average weekly earnings will result in average weekly gross earnings greater than they were

²³⁵ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, ss. 70(1).

²³⁶ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, ss. 70(3).

²³⁷ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, ss. 70(2).

accustomed to earning during the year prior to the commencement of their loss of earnings. This is a feature of the no-fault, easily administered, promptly paying workers' compensation program.

For full-time and part-time worker's employed by more than one employer, it is less straight-forward. The proper approach, and the one used by the Board, is to include all earnings from all work covered by the workers' compensation program. The Board's policy states:

1. Earnings earned in Saskatchewan industries and occupations not subject to the Act may not be used in calculating compensation entitlement.
2. However, earnings earned in another Canadian jurisdiction may be used if the industry or occupation in which these are earned is subject to both workers' compensation legislation in the jurisdiction and Saskatchewan.²³⁸

The Board relies on employers to provide accurate information about earnings of injured workers. Sometimes the employer provides base wage rates and the injured worker's gross earnings and average weekly earnings are calculated using this rate of pay. The compensation may be based on eight hour shifts when the worker was scheduled to work twelve hour shifts.

The cash compensation under this standardized approach is often characterized as under or over compensating individual workers. Whether there ought to be a bias for one or the other is often contentious and was an underlying theme in submissions to this and past Committees of Review.²³⁹ The choice has been to facilitate prompt, no-fault payment by having an administratively straightforward approach to the initial determination of gross earnings on which cash compensation is calculated.

Individual workers want compensation for their actual loss based on all their loss of earnings, including wages for overtime; shift and weekend work at premium rates; premiums for performing supervisory duties; and other premiums. Employers do not want compensation based on overstated earnings because the worker did not regularly work full-time hours or all seasons. Each individual loss of earnings determination is subject to appeal and reconsideration.

This Committee is less concerned with the averaging nature of the initial calculation of cash compensation benefits and more concerned that the circumstances of more seriously injured workers are reviewed and the loss of earnings calculation is properly adjusted. This is a minority of ongoing claims.

²³⁸ Saskatchewan Workers' Compensation Board "Compensation Rate - Excluded Earnings", *Policy Manual*, POE 18/87.

²³⁹ *Workers' Compensation Act Review Committee Supplementary Report*, September 27, 1993, p. 14. *Report of the Saskatchewan Workers' Compensation Act Committee of Review, 1996*, p. 58. *Saskatchewan Workers' Compensation Act Committee of Review 2001 Report*, p. 35.

The experience with the distribution of settled wage loss claims is that 90% do not last longer than 12 weeks.²⁰⁰

The most difficult earnings loss calculation is for part-time, casual and seasonal workers who suffer prolonged injuries. Section 70(4) states:

In determining the average weekly earnings of a worker, the board shall take into consideration the average earnings, as determined by the board, that were earned by a person regularly employed in the same grade of employment if:

- (a) the worker was not available for employment for the full period of 12 months immediately preceding the commencement of his or her loss of earnings resulting from the injury; or
- (b) in the opinion of the board, it is inequitable, by the casual nature or the terms of the worker's employment, to compute the worker's average weekly earnings in accordance with subsection (1).

The Board has a published policy on the calculation of average weekly wages of part-time, casual and seasonal workers. It begins:

Establishing a wage rate for part-time, casual, seasonal and new workers is a challenging process, as these workers, are typically not employed for the full 12 months prior to injury, which sometimes lead to inequitable earnings loss compensation. A policy is required therefore, that represents WCB's effort to base compensation benefits on what will most fairly represent the worker's loss of earnings.

The policy addresses the initial establishment of the amount of compensation.

1. At the commencement of loss of earnings, compensation benefits will normally be based on Section 70(1) of the Act using the rate of pay the worker was receiving at the time of injury, as verified by the employer.
2. In cases where there are no regular or annual wages to establish earnings loss under Section 70(1), (e.g., commissioned sales persons who have worked only a few days and have no sales yet), consideration may be given to applying Section 70(4) for establishing the initial wage base.

Basing cash compensation benefits on the approach in section 70(1) generally reflects the worker's actual immediate loss of earnings. For a longer term loss of earnings, that approach may be "inequitable." The Board's policy defines "inequitable" to be when the compensation is either too high or too low "because the earnings at the time of injury do not accurately reflect the amount of earnings to be generated over the long term."

The legislated provisions in Section 70 to calculate the average weekly gross earning on which cash compensation benefits are to be based is not subject to an overriding Board authority to decide based on the justice and merits of the

²⁰⁰ *Saskatchewan Workers' Compensation Act Committee of Review 2006 Report*, Chapter 4, Figure 40 "Duration Percentage Distribution of Settled Time Loss Claims (1990-2005)", p. 6.

case.²¹¹ The Board is to apply the legislated provisions for calculating loss of earnings to be compensated.

The Board's mechanism to adjust compensation to best reflect the individual worker's situation is to implement a review after twenty six weeks or six months. Only approximately 5.6% of time loss claims extend for 26 weeks or six months. The policy states:

Where workers have been in receipt of benefits for a total of 26 weeks (consecutive or cumulative) and where earnings loss calculated using Section 70(1) is considered inequitable, benefits will be based on the provisions of 70(4). Earnings for workers regularly employed in the same grade of employment in the same industry will be averaged over the 12 months immediately preceding the commencement of loss of earnings date, to establish a wage base.²¹²

An extensive administrative procedure provides for early identification of situations when section 70(4) might potentially apply and for review after 13 weeks from the date of loss of earnings. Calculation and confirmation of a new rate is done during the 14th and 15th weeks. During the 24th week, the Case Manager is to discuss and explain the new calculation with the worker.²¹³ It becomes effective the first day of the 27th week.

On a claim with an injury date of December 7, 2005, cash compensation was based on gross earnings for the 23 weeks from June 30 to December 6 of \$7,146.03. The worker had no other earnings for the 52 previous weeks, but had received Employment Insurance benefits. By letter dated January 4, 2006, the worker was informed that his wage loss benefits would be reviewed at 26 weeks.

The initial calculated average gross weekly earnings was \$310.70, which is \$7,146.03 divided by 23. His daily cash compensation for seven days a week was \$62.14 or \$11,309.48 for the 26 weeks. Commencing the 27th week, the Board recalculated his average weekly wage as \$137.42 by dividing his 52 week earnings of \$7,146.03 by 52. His daily cash compensation for seven days a week was reduced from \$62.14 to \$27.28, but increased back to \$62.14 on appeal because the Board members decided this amount was equitable – neither too high nor too low.

A construction worker working out of a union hiring hall was injured April 22, 2004 on a short-term project on which he worked extended hours and earned \$7,061.36 from April 12th to 27th. This gross earning exceeds the maximum wage rate. He was paid cash compensation of \$92.88 a day for seven days a week for 26 weeks (\$16,904.16). After 26 weeks, the base wage rate was reviewed. He had earned a gross amount of \$22,362.27 in the 52 weeks before

²¹¹ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W 17, s. 25(1).

²¹² Saskatchewan Workers' Compensation Board "Average Weekly Earnings – Section 70(4)", *Policy Manual*, PRO 10/2003.

²¹³ Saskatchewan Workers' Compensation Board "Average Weekly Earnings Section 70(4)", *Procedure Manual*, PRO 10/2003.

the date of injury and had not earned the maximum wage rate in 2003 or 2002. His average weekly gross wage was reduced to \$427.99. His cash compensation was reduced from \$92.88 a day to \$44.65 a day for seven days a week. In 2004, \$44.65 a day was the minimum compensation - 50% of the gross provincial average industrial wage of \$32,878.04.²⁴⁴

Fig. 59: Maximum and Minimum Weekly Cash Benefits (2000-2005)

	2000	2001	2002	2003	2004	2005
Average Provincial Weekly Wage	\$586.94	\$597.61	\$609.91	\$636.46	\$632.27	\$664.93
Ave. Weekly Wage <u>Projected</u> (used for the year's injury rate)	\$546.00	\$546.00	\$609.87	\$636.46	\$632.27	\$664.93
Ave. Weekly Wage <u>Actual</u> (year after injury rate calculated)	\$586.94	\$597.91	\$610.81	\$624.16	\$645.56	\$669.68
Average Provincial Weekly Wage (90% Net)	\$5383.30	\$400.30	\$408.05	\$420.25	\$437.55	\$454.10
Maximum Weekly (90% Net)	\$579.25	\$584.80	\$586.05	\$633.00	\$650.15	\$673.90
As % of Provincial Average Weekly Wage (90% Net)	151.12%	146.09%	143.62%	150.62%	148.59%	148.40%
Minimum Weekly (50% Average)	\$293.47	\$298.81	\$304.96	\$318.23	\$316.14	\$332.46
As % of Provincial Average Weekly Wage (90% Net)	76.56%	74.65%	74.73%	75.72%	72.25%	73.21%

It is common for workers' compensation programs to use readily available pre-injury earning data to establish an initial amount of compensation cash benefit and to seek to pay it quickly. Later, often at 13 weeks or three months, the wage rate on which long term benefits is calculated is reviewed and based on the worker's long term earning profile, usually the twelve months prior to the injury, to more precisely reflect the individual's loss of earnings.²⁴⁵ In some situations, it will be inequitable to base the benefit calculation on the worker's earnings for the twelve months.

In many cases the review will result in a reduction of the wage base and cash compensation. Unless there has been some misconduct by the injured worker in originally reporting gross earnings, the Board's review should not result in a declaration that the amount of the past cash compensation was too high, the worker was overpaid and a debt is now due to the Board.

²⁴⁴ Saskatchewan Workers' Compensation Board "Minimum - Compensation Rate/Weekly Earnings", *Policy Manual*, PC1, 18/2001.

²⁴⁵ Association of Workers' Compensation Boards of Canada, *Employment Earnings Considered When Establishing the Compensation Rate - Summary - 2006*, http://www.awcbs.org/english/board_pdfs/Benefits_Earnings_Considered_When_Establishing_Compensation_Rate.pdf (January 5, 2007).

Recommendation:

The Board's periodic wage rate review should not result in a declaration that some of the past cash compensation was too high, the worker was overpaid and a debt is now due to the Board unless there has been some misconduct by the injured worker in reporting gross earnings.

5.06 12 Month Review and CPP and QPP Disability Benefit Set-Off

The amount of cash compensation paid to an injured worker is based on the worker's average weekly earnings at the commencement of his or her loss of earnings or an amount that is adjusted on later review. The earnings are increased annually by the percentage increase in the Consumer Price Index (CPI). In this way, the cash compensation based on the average weekly earnings also increases.

The CPI increase is to be applied to the workers' average weekly earnings "on the anniversary date of the commencement of the loss of earnings resulting from the injury in the year following the year in which the calculation is made."²⁰⁶

The worker's average weekly earnings are not adjusted to account for the actual general changes in the pre-injury industry or occupation through collective bargaining or otherwise or the likely changes in the individual worker's earnings, which may be more or less than the increase in the CPI.

The Board is expected to be in continuous communication with injured workers with an extended loss of earning capacity. The Early Intervention Program is structured to identify and take steps to help the injured worker recover and return to work.

Each anniversary date of a claim, the Board must review the worker's situation to adjust or confirm the probable income tax deduction based on the worker's personal exemption, exemption for dependants and employment-related tax credits²⁰⁷ and to set-off one-half of the Canada and Quebec Pension Plan disability benefits "relative to the death or injury of the worker or dependent." If the benefit is clearly not as a result of the work injury, there is no set-off.²⁰⁸ Prior to 1989, the set-off was 100%.²⁰⁹

CPP disability benefits provide financial assistance to CPP contributors unable to work because of a severe and prolonged disability. The benefits are indexed and

²⁰⁶ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, s. 69.

²⁰⁷ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, ss. 68(3)(b)-(c).

²⁰⁸ Saskatchewan Workers' Compensation Board "Offset of Canada Pension Plan (CPP) Benefits", *Policy Manual*, POB-42/82.

²⁰⁹ Government of Saskatchewan, *The Workers' Compensation Amendment Act*, 1988, c. 65, clause 19.

100% taxable.²⁵⁰ Individuals can earn up to \$4,200 in 2006 without affecting their entitlement to ongoing CPP disability benefits. The maximum benefit is \$1,031.05 per month and the Canadian average is \$758.86 a month.²⁵¹

The set-off is achieved by attributing one-half the CPP disability benefits as wages the worker is capable of earning. Section 99(1) states:

On the expiration of 12 months from the date of commencement of the loss of earning capacity resulting from the injury, one half of any periodic benefits relative to the death or injury that a worker or dependant is then entitled to receive under the *Canada Pension Plan* or the *Quebec Pension Plan*, as amended from time to time, shall be considered as wages that the worker is capable of earning in calculating the compensation to be paid by the board for loss of earning capacity or in determining the surviving spouse's entitlement.

This does not apply to cash compensation benefits paid to workers and spouses as a result of injury and death under a former Act.²⁵² The set-off for workers injured under a former Workers' Compensation Act is for CPP disability benefits "for the same injury."²⁵³

The indexed increases to CPP disability benefits are not set-off when the wage base is at the maximum.²⁵⁴ There is no set-off for benefits payable after age 65, to minimum benefits, to dependent child benefits or payments to dependent spouses or children under the former Act.²⁵⁵ There is no deduction from one-time permanent functional impairment awards.

Attributing one-half Canada Pension Plan Disability Benefits to be wages a worker is capable of earning, reduces the gross wages on which cash compensation is calculated. The subsequent calculations of probable deductions achieve a net amount of which 90% is paid in cash compensation. The final result is that 43% of the CPP disability benefit is deducted from the cash compensation. The injured worker may have to pay income tax on the 43% deducted from the non-taxable cash compensation payments.

²⁵⁰ Human Resources and Social Development Canada, "CPP Disability – I am Receiving a Benefit", <http://www.hrsdc.gc.ca/en/ep/retnew.asp?fr=1/en/ep/cpp/retnew/duiml&ch=1&dp#d> (January 2, 2007).

²⁵¹ Human Resources and Social Development Canada, "Canada Pension Plan (CPP) Payment Rates", <http://www.hrsdc.gc.ca/en/ep/retnew.asp?fr=1/en/ep/pubs/duiml&ch=1&dp#d> (January 2, 2007).

²⁵² Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, ss. 99(2).

²⁵³ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, ss. 77.01(5).

²⁵⁴ Saskatchewan Workers' Compensation Board "Maximum Earnings – Not CPP of Canada Disability/Survivor Benefits or Estimated/Actual Earnings", *Policy Manual*, P.O. 09/2000.

²⁵⁵ Saskatchewan Workers' Compensation Board "Minimum Compensation and Canada Pension Plan Benefits", *Policy Manual*, P.O. 37/83, "Offset of Canada or Quebec Pension Plan Benefits", *Policy Manual*, P.O. 27/90.

Example:

If an injured worker earned a gross weekly wage of \$1,015.62 the calculation of earnings replacement would be as follows:

Gross weekly wage		\$1,015.62
Less Probable Deductions		
Income Taxes	\$180.34	
Canada Pension Plan	\$ 36.74	
Employment Insurance	\$ 14.03	
	Total	\$231.11
Net weekly wage		\$784.51
Multiplied by 90%		\$706.06
Multiplied by 4.3333 (average weeks per month)		\$3,059.57

The earnings replacement provided to the worker is \$3,059.57 per month. If an injured worker receives Canada Pension Plan Disability Benefits of \$990.26 per month, the monthly earnings replacement is reduced as follows:

50% of \$990.26 is considered wages		\$495.13
Gross Weekly Wage (Divided by 4.3333)		\$114.26
Less Probable Deductions		
Canada Pension Plan	\$2.32	
Employment Insurance	\$2.14	
	Total	\$4.46
Net weekly Canada Disability Benefit		\$109.80
Multiplied by 90%		\$98.82
Multiplied by 4.3333 (average weeks per month)		\$428.22

This final calculation of the 90% net of one-half of the Canada Pension Plan Disability Benefit is deducted from the earnings replacement (\$3,059.57 - \$428.22) for a new earnings replacement amount of **\$2,631.25**.

There are income tax deductions for persons with disabilities for supports and expenses. There is a non-refundable disability tax credit that persons can apply for. It requires a medical practitioner's certificate and reduces the amount of income tax owing. Receipt of a Canada Pension Plan Disability Benefit does not automatically qualify a person for the disability tax credit.²⁵⁰

Fig. 60: Number of Workers with CPP/QPP Disability Benefit Set-offs (2000-2005)

<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
5	50	0	3	14

²⁵⁰ Canada Revenue Agency, "People with Disabilities <http://www.cra-arc.gc.ca/tax/individuals/topics/income-tax/return/completing/deductions/lines300-350/316/eligible.html> (January 2, 2007).

There is no consistent treatment among Canadian jurisdictions in off-setting CPP and QPP disability benefits. Most do in some manner.²⁵⁷

5.07 Annuity Accounts and "Medical Pension" Minimum Benefits after Age 65

The workers' compensation program has a minimum loss of earnings replacement cash benefit that gives some workers more than they would receive for wage loss in fault-based litigation in the courts. This is a needs-based, social program feature of the workers' compensation program.

The minimum amount of compensation payable to an injured worker who is totally unable to work because of injury is either one-half the provincial average weekly industrial wage, not adjusted to 90% net, or the amount of the worker's average earnings if the earnings are less than one-half the average industrial wage.²⁵⁸ The Board interprets "totally unable to work because of the injury" to be "a permanent disability impairing the worker's ability to secure any form of employment."²⁵⁹

In 2006, one-half the provincial average weekly industrial wage²⁶⁰ was \$339.12 per week. If the worker's earnings are less than one-half the average weekly industrial wage, the cash benefit is the worker's actual gross weekly earnings, without deductions.²⁶¹

If an injured worker's recovery period exceeds 24 months, the minimum is increased on the 25th month to 90% net of two-thirds the average weekly industrial wage.²⁶² In 2006, this is \$452.15 per week.

Injured workers with extended periods of loss of earnings suffer serious adverse impacts on their ability to contribute to pension plans and to save for their retirement years after age 65. They suffer a reduction or total loss of retirement income because of their injury or illness.

For injured workers²⁶³ and dependent spouses²⁶⁴ to whom compensation is paid for more than 24 consecutive months, an amount equal to 10% of the cash "compensation paid" is set aside to provide them with an annuity at age 65. This includes compensation paid during training and work assessment. If the worker

²⁵⁷ Association of Workers' Compensation Boards of Canada, *CPP/QPP Offset by WCBs for all Benefit Types – 2006*, http://www.awcbc.org/english/board_pdfs/Benefits_CPP.pdf (January 2, 2007).

²⁵⁸ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, s. 76 and Saskatchewan Workers' Compensation Board, "Minimum – Compensation Rate/Weekly Earnings", *Policy Manual*, POL 18/2001.

²⁵⁹ Saskatchewan Workers' Compensation Board, "Minimum – Compensation Rate/Weekly Earnings", *Policy Manual*, POL 18/2001.

²⁶⁰ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, ss. 76(b), ss. 2(a).

²⁶¹ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, ss. 76(b).

²⁶² Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, ss. 70(5)(b).

²⁶³ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, s. 74.

²⁶⁴ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, ss. 83(2.1).

dies before age 65, the Board pays the accumulated amount in the annuity account to the worker's estate.²⁶⁵

The amount set aside accrues interest until six months after the person reaches age 65. It is maintained in the Board's reserves while it accumulates until a decision is made after age 65. The amount, on the request of the worker, can be paid into "an established superannuation plan." The Board has never been requested to pay into a superannuation plan that will accept the payment.²⁶⁶ Each year, the Board sends a statement to each person with an account.²⁶⁷

Fig. 61: Annuity Accounts (1996-2005)

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Worker Accounts	3,074	3,449	3,540	3,712	3,875	4,090	4,415	4,682	4,885	5,024
Spouse Accounts	75	96	107	246	269	294	319	323	333	347
Interest Rate (%)	10.03	10.81	11.19	13.05	13.80	9.54	6.60	7.10	5.50	7.00
Accts Paid Out	87	90	98	126	112	116	120	156	116	161
Total Paid (\$m)	\$1.44	\$1.61	\$2.01	\$2.47	\$2.26	\$2.74	\$3.20	\$3.85	\$3.64	\$4.50
Av. Paid (\$000)	\$16.55	\$17.89	\$20.51	\$19.60	\$20.18	\$23.62	\$26.67	\$37.50	\$31.38	\$27.95

There are a larger number of accounts with lower accumulated amounts and a smaller number of accounts with higher accumulated amounts - 75% of the accounts have \$30,000 or less; 80% have \$40,000 or less; and 90% have \$60,000 or less; 5% have \$80,000 or more and 2.7% have \$100,000 or more.

²⁶⁵ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W 17.1, ss. 2(c); and Saskatchewan Workers' Compensation Board, "Annuities", *Policy Manual*, PCO 04/2005.

²⁶⁶ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W 17.1, ss. 74(2)(b).

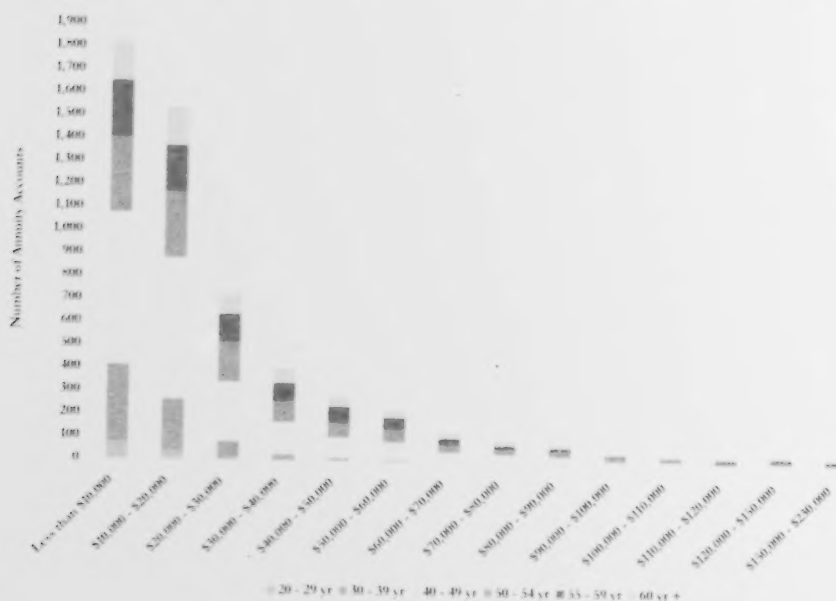
²⁶⁷ Saskatchewan Workers' Compensation Board, "Annuities", *Procedure Manual*, PRO 04/2005.

In cases of undue hardship, the Board has the authority to supplement the annuity income. Currently, two persons receive an annuity supplement. Section 75 states:

Where the board determines that the impact of the injury on the pension of the worker is greater than is recognized by the payments under subsection 74(1) and that it causes an undue hardship to the worker, the board may supplement the income of that worker upon his attaining the age of sixty-five to increase the amount of his income to the minimum amount of compensation then payable.

The Board interprets the "pension" referred to in this section as an employer pension plan and/or the Canada Pension Plan.

Fig. 62: Distribution of Annuity Accounts by Amount and Worker's Age (2006)



When the amount in an individual's annuity account at age 65 is more than \$20,000, by Board policy, the individual must purchase a life annuity that guarantees the return of the principal. In unusual circumstances, the Board will consider an alternative to the purchase of a life annuity.²⁶⁸

There are limited options to purchase annuities with \$20,000. Today, if a 65 year old male with normal life expectancy purchases an annuity for \$20,000 with a guaranteed return of principal and no continuing payment to a surviving spouse, he will receive a monthly income for life of approximately \$120.00. The amount that will be taxable will depend upon the amount of the total annual income.

²⁶⁸ Saskatchewan Workers' Compensation Board, "Annuities", *Policy Manual*, PC 01_04/2005.

When the amount in an individual's annuity account at age 65 is less than \$20,000, the Board is authorized, in lieu of using the money to provide an annuity, to pay the accumulated capital and interest to the worker or surviving dependent spouse to be used for whatever purpose the person decides.²⁶⁰

The amount of \$20,000 is too low for an annuity purchase from most vendors. The Board asks that the amount be increased. Many workers and their families have other uses for this savings that best suits their circumstances and life expectancy, rather than purchasing a life annuity.

Recommendation:

Amend subsection 74(3) to allow the worker to choose to either purchase an annuity or receive a lump sum payment when the accumulated capital and interest is \$25,000 or less in 2007 and to adjust the \$25,000 in increments of \$1,000 annually in subsequent years to reflect the average percentage change in the Consumer Price Index.

Workers awarded compensation under a former Workers' Compensation Act receive cash benefits based on the medically rated percentage of their functional impairment.²⁶¹ The cash benefit is often referred to as a "medical pension."

Fig. 63: Distribution by Age of Former Act Medical Pensioners (December 31, 2005)

Age	Workers	Surviving Spouses
<50 years	50	1
50 – 59	227	27
60 – 69	274	41
70 – 79	291	61
80 + years	178	74
Total	1,020	204

The amount of the cash benefit is 75% of gross earnings at the time of injury prior to September 1, 1985, subject to the maximum wage rate at the time. In 1985, the maximum wage rate was \$33,000 and the maximum monthly cash compensation was \$2,062.50.²⁶² If the gross earnings were above the maximum, the cash compensation increased as the maximum wage rate increased. The minimum monthly cash benefit for these workers is calculated by multiplying the percentage of their permanent functional impairment by \$580.²⁶³

²⁶⁰ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17, L. ss. 74(3) and ss. 83(8).

²⁶¹ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. 12, ss. 60 and ss. 70.

²⁶² Saskatchewan Workers' Compensation Board, "Compensation Rate – Maximum, 2007 – \$3,384.16(2007) Manual, PC1-09/2006, Attachment.

²⁶³ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17, L. ss. 77(1)(1).

For this cash compensation benefit, the workers injured prior to September 1, 1985 are not eligible to have an additional 10% set aside to provide for an annuity.²⁷³ Instead, the cash benefit, adjusted at age 65, is payable for life.

A large number of the 1,020 former Act workers receiving a pension based on their medically rated functional impairment have a low percentage rating and a small number have a high percentage rating. The average is 11%.

Fig. 64: Distribution by Percentage Rating of Medical Pensioners (December 31, 2005)



Since 1983, there has been provision for review and adjustment of the compensation of workers injured under a former Workers' Compensation Act until they reach age 65.²⁷⁴ As a result, these injured workers receive compensation for loss of earnings equivalent to workers injured after 1979. In this way, the timing of their injury does not disadvantage them in comparison to later injured workers and the \$580 minimum does not reflect their benefit entitlement before age 65.

This supplemental loss of earnings cash benefit is not treated as compensation paid for which the Board sets aside an amount equivalent to 10% to provide an annuity at age 65.

²⁷³ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, s. 77.

²⁷⁴ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, s. 77.01.

Surviving dependent spouses under a former Workers' Compensation Act do not have an annuity account for their financial support after age 65.²⁷⁵ Instead, since 1993, at age 65 they receive cash compensation of \$630 per month for life.²⁷⁶ Today, a 65 year old female with normal life expectancy will have to pay approximately \$108,000 to purchase a life annuity providing \$630 per month for life with a guarantee of return of principal and no survivorship payments. This entire amount is subject to taxation depending upon income level.

For workers with a permanent award under a former Workers' Compensation Act, the **minimum** monthly payment at age 65 is no longer calculated as a percentage of \$580. Instead, it is calculated as a percentage of \$530.²⁷⁷ In 1981, off setting monthly Old Age Security payable at age 65 reduced the \$580 to \$530.²⁷⁸

The explanation for the difference between \$630 per month for all spouses, whose spouse's death is to be medically rated as 100% and a \$530 per month minimum medical pension for a surviving worker medically rated at 100% is that sections 77.01 and 77.1 provide for increases to injured workers under a former Workers' Compensation Act based on wages. Spousal benefits are not tied to wages. Instead, the amount of the benefit was fixed at \$630. Prior to the 1993 amendment the spouse was to receive "the amount that would have been payable to the worker with respect to whom the spouse is entitled to compensation if the worker had attained the age of 65 years."

A large number of the 1,020 medically rated pensioners were earning more than \$773.33 per month at the time of their injury. 75% of their loss of earnings, if their degree of functional impairment was 100%, was more than \$580 per month, which is 75% of \$773.33. Because the amount is payable for life, at age 65, they are not below the minimum compensation payable and there is no change in their compensation because the amount they continue to receive by multiplying their degree of functional impairment by \$580 is greater than if multiplied by \$530.

Fig. 65: Age and Degree of Functional Impairment 1,020 Medical Pensions

Age	Number	Minimum	100%	75% - 99%	50% - 74%	25% - 49%	10% - 24%	Under 10%
40 - 49	50	6	1	0	0	2	0	3
50 - 59	227	51	0	1	3	6	22	19
60 - 69	274	106	7	1	5	19	62	12
70 - 79	291	129	6	2	11	21	78	11
80 - 89	162	72	2	2	5	13	44	6
90 +	16	9	0	1	1	2	5	0
	1,020	373	16	7	25	63	211	51

²⁷⁵ Saskatchewan Workers' Compensation Board, "Annuities", *Policy Manual*, P301, 04/2005.

²⁷⁶ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-47.1, ss. 98.1(3).

²⁷⁷ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-47.1, ss. 77.1(1).

²⁷⁸ Government of Saskatchewan, Second Reading Debate, *Debates and Proceedings 1980-81*, p. 3378-3381.

There are 373 medically rated pensioners subject to the minimum. For these injured workers, as for workers injured under the current Act, no compensation is paid after age 65 to replace loss of earnings. At age 65, the minimum monthly earnings on which their medically rated pension is calculated is reduced from \$580 to \$530.

For these workers with a permanent award under a former Workers' Compensation Act, the minimum monthly amount on which their cash compensation benefit is calculated after age 65 has remained unchanged since 1981 as a percentage of \$530 per month or \$6,360 per year for a person with a 100% functional impairment. There has been no inflation protection or indexing of this amount. Section 77.1 states:

- (1) Notwithstanding any provision of any former *Workers' Compensation Act* or any other provision of this Act, an injured worker entitled to compensation for permanent disability pursuant to a former *Workers' Compensation Act* shall receive a minimum monthly amount calculated by multiplying the degree of his functional impairment, expressed as a percentage as the board may from time to time determine, times \$580 in the case of a worker under 65 years of age or times \$530 in the case of a worker 65 years of age or over.
- (2) Subsection (1) does not apply to the commuted portion of any award.

Today, a 65 year old male with normal life expectancy would have to pay approximately \$90,000 to purchase a life annuity paying \$530 per month with a guaranteed return of principal and no spousal survivorship payments.²⁷⁹ There is a provision under the Act for continued payment to a surviving dependant spouse for twelve months.²⁸⁰ This entire amount would be subject to taxation depending upon income level.

To accumulate an annuity account of this amount, including interest, by December 2006, an injured worker would have to have received continuous compensation cash benefits of \$670.00 each month since 1980.

Because of their disability, workers with an permanent award under a former Workers' Compensation Act based on a high medical rating of functional impairment have not been able to work, earn and contribute to the Canada Pension Plan, an employer or union pension plan or a personal retirement savings plan. The Board does not have authority, as it does for workers eligible for an annuity account, to address cases of undue hardship caused by loss of ability to contribute to a pension for retirement.

²⁷⁹ Calculation prepared for the Committee of Review by the Saskatchewan Pension Plan and the Saskatchewan Public Employees Benefits Agency.

²⁸⁰ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, ss. 97(2).

Under Board policy since 1983

Any worker in receipt of periodic benefits for permanent disability who is not suffering or likely to suffer any loss of earning capacity because of the disability and whose payment from the Board does not constitute more than one half of his total income will be given the choice of continuing to receive periodic benefits or a commutation of these.²⁸¹

The 1996 Committee of Review recognized there were some inequities and hardship for these aging workers with medical rated pensions. However, that Committee did not agree on what should be done.²⁸²

Sometimes the failure of a program to remain current and the design and evolution of a workers' compensation program create a need for subsequent correction and redress to restore fairness and demonstrate compassion for those most in need. After time, social responsibility demands some corrective action be taken.

Because of the passage of time and inaction, the cost of the corrective action is a cost transferred from former employers and workers to current employers and workers. The assessments to pay the corrective cost are paid by employers and the expenditure is not available to improve other benefits for other injured workers.

The Committee has concluded that the minimum monthly amount on which benefits are calculated by using the degree of functional impairment after age 65 should be increased from \$530 to \$630, the amount a surviving dependent spouse receives after age 65. An increase to \$630 will result in a present or future increase in benefits for the 373 medical pensioners subject to the current age 65 minimum of \$530. For some the increase will be the full \$100 a month. For others it will be less.

Fig. 66: Recommendation - Likely Distribution of Impact of Increase per Month

Increase	\$100	\$75 - \$99	\$50 - \$74	\$25 - \$49	\$10 - \$24	Under \$10
Workers	16	7	25	63	211	51

Using the same data, assumptions and valuation method as in the Board's annual actuarial valuation, the immediate increase to future liabilities has been projected by the Board's actuaries is \$612,000.²⁸³

²⁸¹ Saskatchewan Workers' Compensation Board, "Pension Commutations", *Policy Manual*, POL 50/1983.

²⁸² *Report of the Saskatchewan Workers' Compensation Act Committee of Review 1996*, p. 49.

²⁸³ The Saskatchewan Workers' Compensation Board provided this cost estimate at the request of the Committee of Review.

Recommendation:

Amend section 77.1(1) to substitute “\$630” for “\$530”.

5.08 Allowances and Expenses

The Saskatchewan workers' compensation program pays allowances or reimburses for certain expenses to cover costs incurred as a consequence of employment related death, injury and illness. Not all Canadian jurisdictions have the same allowances or reimbursable amounts for expenses.²⁸¹

A lump sum of \$10,707 is paid for burial expenses.²⁸² For routine property maintenance and transportation, there is an annual, life time allowance for eligible workers to enable them to maintain a reasonable degree of independence.²⁸³ The average payment for 2005 was \$1,695. Under Board policy, persons living in a nursing home, extended care facility or other special care institution are not eligible, unless their dependent spouse and children continue to maintain the family home. Then the allowance may be paid to the dependent spouse or children.

Since first enacted in 1985, there have been 4 changes in the eligibility criteria.²⁸⁴ With each change in Board policy and criteria persons previously not eligible for the allowance would qualify. For example, in September of 1973, a worker suffered an amputation of the right arm and was assessed with a 65% permanent partial disability. The worker did not qualify in 1985 because under the criteria at the time the worker was not unemployable. The worker did not qualify under the 1989 criteria because permanent disability rating was not 100%. In 1994, the worker qualified for maximum allowance because the rating was greater than 40%.

Currently, the eligibility criteria and amount of the allowance are determined by the severity of a worker's permanent functional impairment rating. If the rating is 40% or greater, the amount is \$2,260. If the rating is from 10% to 39%, the amount is calculated by dividing the percentage by 40% and multiplying by the maximum of \$2,260. For example a PFI of 20% would result in an allowance of \$1,130. Permanent functional impairments for hearing loss are not considered eligible for an independence allowance.²⁸⁵

²⁸¹ Association of Workers' Compensation Boards of Canada, *Special Allowances – 2006 Expense Rates Information*, http://www.awcbc.org/english/Board_pdfs/Benefits_Special_Allowances.pdf (January 2, 2007).

²⁸² Saskatchewan Workers' Compensation Board, "Consumer Price Index – 2005 Increase", *Procedure Manual*, PCL 59/2005.

²⁸³ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-47.1, s. 67.1 and Saskatchewan Workers' Compensation Board, "Allowance – Independence", *Policy Manual*, POL 09/2004.

²⁸⁴ Saskatchewan Workers' Compensation Board, "Allowance – Independence", *Policy Manual*, POL 09/2004.

²⁸⁵ Saskatchewan Workers' Compensation Board, "PFI – General", *Policy Manual*, POL 13/2003.

Fig. 67: Number and Cost of Independence Allowances (1996-2005)

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
December 31st	415	417	388	414	481	923	1,059	1,147	1,372	1,438
Benefit Paid (\$m)	\$1.01	\$1.00	\$0.95	\$1.09	\$1.14	\$2.98	\$2.27	\$2.19	\$2.81	\$2.44

Since 1990, there have been 2,143 permanent functional impairment ratings at or above 10%. Of these, 226 have been at or above 40%.

The Board's training instructions to its employees are that workers are to be informed as soon as possible after a permanent functional impairment rating has been determined, and preferably at the rating interview, that they may be entitled to an independence allowance. The Board has a standardized letter that is to be sent when a permanent functional impairment has been assessed at 10% or more or where multiple injuries produce a combined rating of 10% or more. The purpose is to ensure possible entitlement to independence allowance is not inadvertently overlooked. Before the rating, the worker may be eligible to receive personal care allowance or temporary additional expenses reimbursement.²⁸³

While it appears the change in criteria in Board policy in 1999 resulted in the increase in the number of independence allowances, the Committee heard several representations that the Board was not vigilant in informing injured workers that they may be eligible for this allowance when it changed the criteria so that persons previously ineligible become eligible. This is a concern that arises on all Board policy changes.

Because of its exclusive jurisdiction and the impartial inquiry approach to decision-making, when the Board makes a new policy it is expected the Board will have an accompanying implementation plan that will include identifying and notifying any existing injured workers whose benefit entitlement will be affected.

Recommendation:

The Board include in its policy making process the adoption of a plan to identify and apply each new policy to all affected and eligible persons when it adopts a new policy.

The Board pays a monthly personal care allowance to assist "in lessening or removing any handicap resulting" from an injury or illness for four levels of care.²⁸⁴ The allowance is adjusted annually for changes in the Consumer Price Index.²⁸⁵

²⁸³ Saskatchewan Workers' Compensation Board, "Allowance Personal Care" and "Allowance Temporary Additional Expense", *Policy Manual*, POL 05/2000 and POL 04/2000.

²⁸⁴ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, ss. 115(b).

²⁸⁵ Saskatchewan Workers' Compensation Board, "Allowance Personal Care", *Policy Manual*, POL 05/2000 and, "Consumer Price Index - 2005 Increase", *Procedure Manual*, PRO 59/2005.

Fig. 68: Personal Care Allowance Amounts (2006)

Level of Care	Allowance
1	\$359 / month (\$4,308 / year)
2	\$724 / month (\$8,688 / year)
3	\$1,441 / month (\$17,292 / year)
4	\$1,809 / month (\$21,708 / year)

Fig. 69: Number and Cost of Personal Care Allowances (1996-2005)

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
New	106	24	29	37	42	43	79	85	100	126
Terminated	48	36	63	55	59	33	99	105	132	181
December 31st	61	73	59	75	83	122	109	131	125	115
Benefit Paid (\$m)	\$0.75	\$0.85	\$0.97	\$1.00	\$1.21	\$1.18	\$1.31	\$1.83	\$1.43	\$1.47

The Board pays three categories of clothing allowance, adjusted annual for changes in the Consumer Price Index.²⁹²

Fig. 70: Clothing Allowance Amounts (2006)

Type	Allowance
Upper Limb	\$20.09 / month (\$241.08 / year)
Lower Limb	\$44.35 / month (\$532.20 / year)
Both Limbs	\$64.43 / month (\$773.16 / year)
Eye glass frames	\$143.00

The Board may pre-approve travel and sustenance for attendants other than medical personnel to escort an injured worker. The attendant is reimbursed on the basis of actual salary loss.²⁹³ The Board does not provide a guide and support dog allowance. The Board meal and mileage travel expense amounts are in accordance with rates set by the Saskatchewan Public Service Commission.²⁹⁴ Hotel and private room rates are set by policy.²⁹⁵

The Board has a policy to reimburse temporary additional expenses that arise out of any of the following injury-related circumstances:

- the severity of the injury makes it impossible to perform these tasks, such as bilateral casts, or temporarily in a wheelchair;
- while convalescing following surgery;
- while attending early intervention programs;
- while traveling for medical or other appointments;

²⁹² Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W 17.1, s. 80 and Saskatchewan Workers' Compensation Board, "Allowance, Clothing", *Policy Manual*, POL 02/2001.

²⁹³ Saskatchewan Workers' Compensation Board, "Expenses – Travel & Sustenance – General", *Policy Manual*, POL 07/2003.

²⁹⁴ Saskatchewan Workers' Compensation Board, "Expenses – Travel & Sustenance – General", *Policy Manual*, POL 07/2003 and "Expenses – Travel & Sustenance – General", *Procedure Manual*, PRO 56/2005.

²⁹⁵ Saskatchewan Workers' Compensation Board, "Expenses – Travel & Sustenance – General", *Policy Manual*, POL 07/2003 and "Expenses – Travel & Sustenance – General", *Procedure Manual*, PRO 56/2005.

- e. while hospitalized;
- f. while participating in return-to-work programs; or
- g. while the client requires an attendant for transportation between health care facilities.²⁸⁶

At all times and for all circumstances, there must be ongoing communication between the Board and severely injured workers.

While the Board informs workers about the benefits to which they may be entitled in its initial letter accepting a claim and, in more serious and extended cases, through a workers' handbook,²⁸⁷ the statute does not identify personal care allowance as a benefit workers might be entitled to receive. The statute does identify independence²⁸⁸ and clothing²⁸⁹ allowances.

Recommendation:

Amend section 80 to include specific reference to personal care allowance, in amounts, and for levels of care, to be determined by the Board.

Cheques issued by the Board for travel and sustenance expenses do not currently include an itemized explanation of the rates and method of calculating the gross amount.

Recommendation:

The Board include with each expense cheque a comprehensible and comprehensive statement explaining the expenses being paid, the amount for each expense and the calculation of the total being paid.

5.09 Pre-Existing Conditions and Chronic Pain

Injured workers are to be treated as individuals under the workers' compensation program. This must always be remembered despite how often averages and aggregate statistics may be used to explain what is happening within the program.

Individuals come to the Board with medical histories, weaknesses, previous injuries, existing disabilities, vulnerabilities and degenerative conditions. A worker may have a personal predisposition or susceptibility so that a workplace event or activity produces an injury beyond the average severity.

²⁸⁶ Saskatchewan Workers' Compensation Board, "Allowance: Temporary: Additional Expense", *Policy Manual*, PO 01-04/2000.

²⁸⁷ Saskatchewan Workers' Compensation Board, *Information for Workers*, <http://www.wclask.com/WCBPortal/ShowProperty?WCBRepository/formsPublications/publications/infoForWorkers/pdfContent> (January 3, 2007).

²⁸⁸ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, s. 67.1.

²⁸⁹ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, s. 80.

Fig. 71: Claims Terminated (1998-2005)

	1998	1999	2000	2001	2002	2003	2004	2005
No Further Entitlement	1,738	1,484	1,526	1,536	1,175	1,330	1,189	1,197
Terminated – not elsewhere specified	52	37	25	34	68	45	27	26
Alternate Employment and Alternate Job	260	295	271	245	244	294	294	258
Alternate Employment and Old Job	41	41	26	24	23	21	16	19
Pre-Injury Employment and New Job	159	152	98	105	133	147	142	133
Pre-Injury Employment and Job	11,599	13,250	14,104	14,543	15,519	14,899	14,385	14,188
Totals	13,849	15,259	16,050	16,487	17,162	16,736	16,053	15,821

The Board has a cost relief policy assigning costs to the Second Injury and Re-employment Reserve because of a pre-existing condition.³⁰³ However, the Board is unable to produce data on decisions about the existence of pre-existing conditions among injured workers; whether the injury was judged to materially aggravate or accelerate the pre-existing condition; and the effect that judgment had on the extent or duration of benefits.

The Board may terminate compensation benefits because it decides an individual worker's work related injury has been resolved or the worker has all the necessary skills and abilities to obtain "suitable productive employment."³⁰⁴ The worker may not agree that he or she is capable of doing what the Board decides the worker can do and that he or she no longer needs assistance.

For a statistical minority of workers, there will be an abnormally prolonged recovery period, perhaps without any clinically verifiable cause, and perhaps with chronic pain that did not exist before the injury. The workers may be receiving sub-optimal diagnosis and treatment. There might be an incorrect assessment or further injury under the Early Intervention Program.

Attributing the prolonged recovery or chronic pain to pre-existing conditions absolves the workers' compensation program of responsibility, but does not restore the worker to his or her pre-injury, at work circumstance.

For these workers, their functional ability has been impaired because of the overlay of a work related injury on a pre-existing condition, which might be an acute susceptibility - a "thin skull."

The Board has an administrative procedure to implement its pre-existing conditions policy, which states:

1. Operations staff are responsible for the application of Section 50 as soon as possible after learning that the worker had a

³⁰³ Saskatchewan Workers' Compensation Board, "Second Injury and Re-Employment Reserve", *Policy Manual*, POL 14/1999.

³⁰⁴ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, ss. 104(4)(b).

pre-existing condition which may affect the course of recovery from the work injury.

2. Operations staff will investigate the pre-existing condition, gathering all the information that is available regarding the condition from the worker, his or her health care providers, and if necessary, from past and present employers and coworkers, as well as other insurers. As stated in the policy, particular attention should be paid to:
 - a. any history of prior problems in the same or nearby areas as the work injury,
 - b. the effect(s) of any pre-existing condition on the worker's function leading up to the work injury (ie., pre-injury status), and
 - c. obtaining relevant medical reports regarding such problems.
3. Operations staff will access the workers' health care providers and the board's Medical Consultants for whatever assistance and advice may be needed to establish and document the following medical facts:
 - a. the extent of the work injury (essentially a matter of diagnosis), whether or not the worker has recovered from the work injury, and
 - b. whether and to what extent a pre-existing condition has been aggravated or accelerated by the work injury. If acceleration has occurred, there will almost always be some pathological evidence confirming the presence of permanent changes resulting from the work injury. In most cases, this information will be obtained during the course of utilizing the Early Intervention Program and by following case management principles and policy.
4. Operations staff is to consider the application of cost relief under the Second Injury and Re-employment Reserve policy.
5. Operations staff is to make document and communicate decisions pursuant to section 50 in accordance with legislation and policy regarding decisions and the application of the benefit of doubt.
 - a. To avoid misunderstanding, correspondence is to focus on the effects of the work injury. For example, when a worker has recovered from a work injury and is fit to return to work, the decision to terminate benefits should be communicated with that information. Unnecessary discussion of any ongoing effects of the pre-existing condition should be avoided.
 - b. A copy of a Fact Sheet regarding pre-existing conditions and the application of section 50 is to be enclosed with section 50 decision letters.³⁰⁵

³⁰⁵ Saskatchewan Workers' Compensation Board, "Pre-Existing Condition - Section 50", *Procedure Manual*, PRO 01/2000.

Despite this administrative procedure, the Board does not track or compile and could not supply section 50 decision letters to the Committee, as it could with appeal decisions and earnings estimation reports.

Disputes over denial or termination of benefits often arise because the Board cites a pre-existing condition as the reason for the denial or termination of benefits, although the pre-existing condition did not prevent or interfere with the worker's ability to regularly work before the compensable injury.

In essence, the Board is making a decision that requires current and complete medical information. For sound adjudication and disability management, the Board must communicate with the injured worker's health care providers before making a decision to deny or terminate benefits.

Recommendations:

The Board revise its pre-existing condition policy and procedures within one year to ensure the opinion of the injured worker's health care provider is obtained before making a decision to deny or terminate benefits based on the conclusion the worker's pre-existing condition is solely the reason for the disablement or other effects or is solely the reason for the prolonged period of recovery from the disablement or other effects.

The Board establish a procedure to identify and retrieve Section 50 decision letters that will enable the Board and future Committees of Review to access and analyse decisions under Section 50.

Normal recovery and return to work is sometimes impeded by the onset of chronic pain following an employment related injury or illness. Chronic pain is not listed by the Board in its diagnosis list as an occupational disease or disorder.³⁰⁶ It is listed in its medical services.³⁰⁷

The Board does not have any published policies or procedures on chronic pain or chronic pain syndrome. The Saskatchewan Board is one of only two Canadian workers' compensation boards that do not have a published chronic pain policy.³⁰⁸

The Board has a case management training document on chronic pain, not published or readily available to the public, that identifies chronic pain and chronic pain syndrome as an occupational disease.³⁰⁹ Tertiary assessment teams include a Ph. D. psychologist to identify and address chronic pain.³¹⁰

³⁰⁶ Saskatchewan Workers' Compensation Board, "Occupational Disease", *Statistics*, http://www.wchsask.com/WCBPortal/appmanager/WCBPortal/WCB22_nfpb=true&_pageLabel=page_statistics (January 3, 2007).

³⁰⁷ Saskatchewan Workers' Compensation Board, "Health Care Services", *Policy Manual*, POL 05/96.

³⁰⁸ The other board is the Yukon.

³⁰⁹ Saskatchewan Workers' Compensation Board, *Chronic Pain/Chronic Pain Syndrome*, September 2006.

³¹⁰ Saskatchewan Workers' Compensation Board, "Health Care Services", *Policy Manual*, POL 05/96.

The Board's adjudication and administration is expected to be principled, fair, consistent, open and accountable when it makes final and binding decisions under the statute. Discretionary and delegated decision-making is a necessary feature of modern administration of justice and the workers' compensation program. It is necessary to achieve just results in individual cases.

The Board uses policies, guidelines, training manuals, interpretive and information bulletins, internal practice directives, questionnaires, standard or form letters and various other written documents to guide and direct its employees in the exercise of discretion and decision-making.

Policies put intention into action in a manner that is open and accessible to everyone who interacts with the Board and relies on the workers' compensation program. The Board characterizes its policy as the "primary operating" authority under the statute. It "constitutes the day-to-day decision making framework and authority."³¹¹

It is the Board's duty to "make its policy directives available to the public."³¹² In this way the benefits to which workers are entitled become more accessible.

Published policy is a picture window into how the Board leadership intends the statute to be administered from day-to-day. It explains and prepares workers, employers and their representatives and advocates for what can be expected. Published policy sets predictable norms and rules. Deviation from published policy will require careful and thorough explanation.

Published policy also serves as the focus of discussion between Board decision-makers and individuals who disagree with a decision. When they disagree with the interpretation or application of the policy, the focus is on the policy not the power one holds to finally decide. It is more difficult for decisions based on a reasoned application of published policy to be characterized as arbitrary or insensitive. It is more difficult to characterize a decision-maker applying published policy as arrogant or uncaring.

It is time the Saskatchewan workers' compensation program had a published policy on chronic pain and chronic pain syndrome.

Recommendation:

The Board develop, adopt and publish a policy on chronic pain and chronic pain syndrome within one year.

³¹¹ Saskatchewan Workers' Compensation Board, *Policy Manual*, p. ix.

³¹² Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, ss. 21.1(2).

5.10 Team-Based Case Management and Operations Staff Profile

In the fall of 2001, when the last Committee was completing its review, the Board introduced a fundamental change in its internal organization for the investigation, adjudication and management of temporary and permanent disability claims.

The Board moved away from individual case management by a single Client Service Representative (CSR) to case management by teams composed of Case Managers, Vocational Rehabilitation Specialist, Payment Specialists, Administrative Support and a Team Leader. Today there are eight teams. One team of 48 employees specializes in deciding initial claims entitlement. The other seven teams manage cases assigned by geographic area.

The purpose of this internal organizational change was to deliver better service and create greater accountability.

One key direction is to build a team that has "the right person in the right job." This means developing people strategies to encourage a high-performance corporate culture – an environment in which individual employees respond to higher levels of personal accountability and the organization focuses on service outcomes. A new performance management system has begun measuring results. A recruitment-retention-retraining strategy puts greater focus on competencies. A renewed commitment to learning has led to greater investment in leadership training and skills development.

WCB 2001 Annual Report, p. 9

On September 3, 2002, a year after the transition to team-based case management commenced, the Board launched a Long Term Claim Assistance Project because a disproportionate number of active, short term wage loss claims had continued for six months or longer.

It was suspected this was due to "the general upheaval

associated with large scale reorganization to team based case management."¹¹³

The Board reviewed 1,219 open accepted claims, which is a significant portion of the 13,000 to 14,000 time loss claims accepted each year. By May 21, 2003, 411 had been closed, of which 39 were appealed; one was disallowed; one was closed and reopened; and 806 were ongoing, of which approximately 150 were estimated to require partial or full long term earnings replacement. The review generated 131 new requests for vocational assistance and identified the following twenty-one reasons for delays with the number for each.

1. Surgery Wait List (265)
2. Medical Condition Worsened (277)
3. Specialist Delay (152)
4. Expansion of Medical Condition (149)
5. Medical Condition Other than Injury (116)

¹¹³ Saskatchewan Workers' Compensation Board, *Long Term Claim Assistance Project*, 2003.

6. No Recovery and Return to Work Plan (100)
7. Vocational Rehabilitation Delayed (96)
8. Diagnostic Delay (58)
9. Physical Rehabilitation Program Delayed (57)
10. Claims Acceptance Unexplained (52)
11. Medical Condition Not Adjudicated (44)
12. No Client Contact (37)
13. Early Intervention Program Treatment Interrupted (37)
14. Interrupted Treatment (33)
15. Ongoing Unexplained Symptoms (71)
16. Physical Rehabilitation Program Interrupted (32)
17. Early Intervention Program Treatment Extended (31)
18. Physical Rehabilitation Program Discontinued (29)
19. No Individual Vocational Plan (27)
20. Early Intervention Program Request Delayed (24)
21. Early Intervention Program Treatment Discontinued (13)

The estimate was that the review contributed to a \$1.3 million per month reduction in claims expenses between July 2002 and April 2003.

The extent of the impact of the upheaval and inattention to the needs of workers and employers is unknown. On October 23, 2002, the Chair of the Board told the Legislative Assembly Standing Committee on Public Accounts "it will take 12 months to provide a real comprehensive evaluation of all new processes because some of them won't be implemented until actually January when Bill 72 fully kicks in and is proclaimed."³¹⁴

In 2004, the Provincial Auditor reviewed the new claims management processes against criteria developed in 2003.³¹⁵ The Provincial Auditor determined that to adequately administer injured workers' claims, the Board needs to have policies and procedures to:

1. Communicate internally and externally the expectations for claims processing;
2. Build its human resource capacity to meet its claims processing policies;
3. Process injured workers' claims;
4. Maintain a quality control system for processing injured workers' claims; and
5. Provide senior management and Board members with adequate financial and performance information.

In 2004, the Provincial Auditor recommended the Board:

- receive injury reports from employers promptly;
- identify claims where recovery may be possible from other parties, and effectively pursue such recoveries;

³¹⁴ Saskatchewan Provincial Auditor, *2003 Report-A volume 1*, p. 141.

³¹⁵ Saskatchewan Provincial Auditor, *2004 Report-A volume 1*, p. 226.

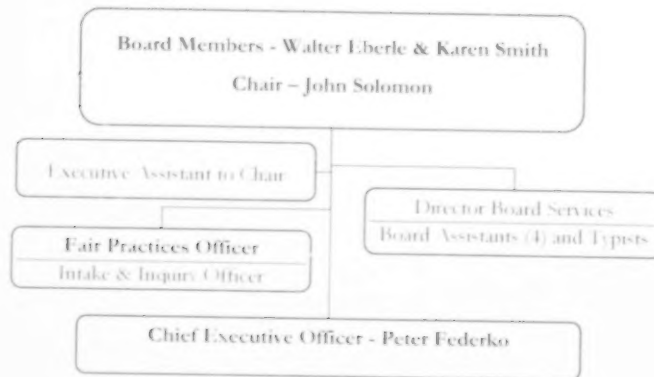
- ensure its actuaries receive and use accurate data to calculate the expected benefits owing to injured workers;
- follow its processes to calculate the expected costs or savings for all policy changes;
- set out guidelines for documenting its quality control work;
- monitor the quality of administration of the long-term claims assigned to case management teams;
- formally define its reporting needs to oversee the administration of claims; and
- receive and approve an adequate work plan for the internal auditor.³¹⁶

As of September 2006, the Board has 412 employees of whom eleven report to the Chair.

³¹⁶ Saskatchewan Provincial Auditor, *2004 Report Volume 1*, p. 226.

Fig. 72: Board Members and Chair's Direct Reports

As of December 31, 2006, there are twice as many women as men employed by the Board - 287 women and 125 men. Among the Board's employees, 31 have a disability, 12 are members of a visible minority and 9 are members of a first nation.



There are 392 employees reporting to the Chief Executive Officer. Of these, 384 are organized in three operating departments, each lead by a vice-president. The remaining 8 are under the direct supervision of the CEO.

The Prevention, Finance and Information technology group has 187 employees. Within this group, there is an Executive Director of Prevention with 11 employees reporting to him.³¹

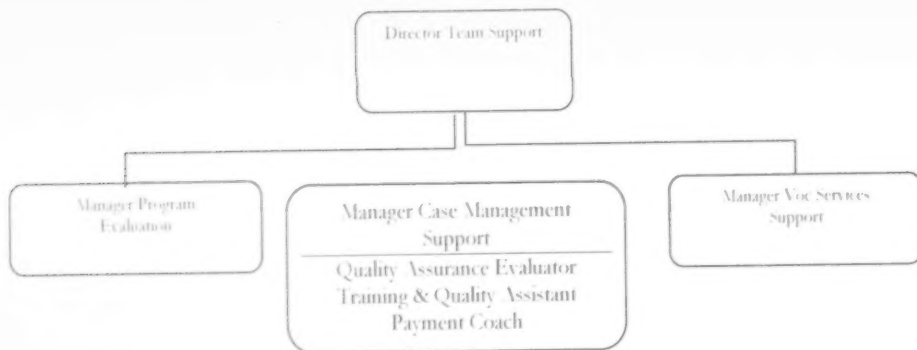
Fig. 73: WCB Staff Complement (1996-2005)

<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
345	370	378	384	407	421	428	433	427	423

The Human Resources and Team Support group has 21 employees, including the Director of Team Support and the employees reporting to him.

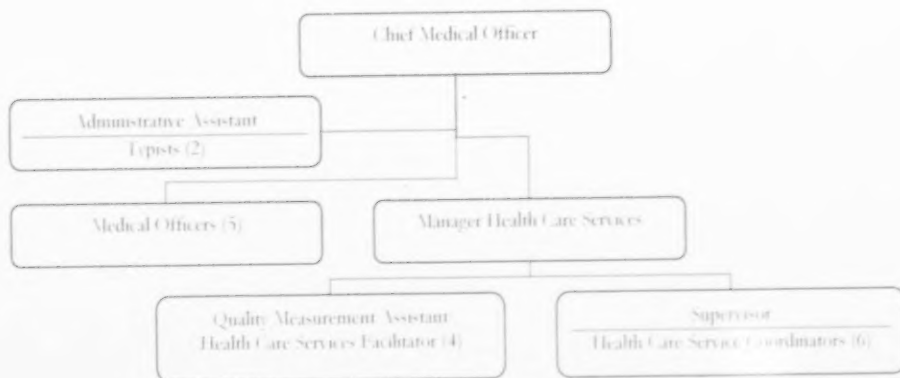
³¹ *Yaschat'kenan Workers' Compensation: A Committee of Review 2006 Report*, Chapter 3, "Board's Prevention, Safety and Return to Work Organization 2006", figure 28.

Fig. 74: Human Resources and Team Support



There are two groups of employees in the Operations department. The Chief Medical Officer supervises five Medical Officers and the Health Care Services group. These two groups were amalgamated into one under the Board's Chief Medical Advisor to improve relationships and alignment between the Board and the health care sector.

Fig. 75: Chief Medical Officer



The eight Case Management teams consist of 165 employees. The experience and education of the 30 claims entitlement specialists, 62 case managers and support employees are in the following charts. A similar chart for the 17 vocational rehabilitation specialists is in the next chapter of this report.

Fig. 76: Claims Entitlement Specialists Experience, Service and Education



Fig. 77: Case Managers Experience, Service and Education



Since 2001, the Board has recruited 10 new case managers and case management support employees from outside the Board with three or more years of post-secondary education and no prior experience with the Board. In the last three years, the newly recruited claims management employees have less post-secondary education and substantial prior experience with the Board. This appears to be the practical effect of the Board's competency-based recruitment³¹⁸ following the implementation of a competency framework in 2003.³¹⁹

The distinct impression the Committee has from the experiences recounted to us and the submissions received is that team-based case management is operating less optimally than was expected and than it can. Our impression is that the

³¹⁸ Saskatchewan Workers' Compensation Board, *Report to Stakeholders 2005*, p. 17, *Report to Stakeholders 2004*, p. 13.

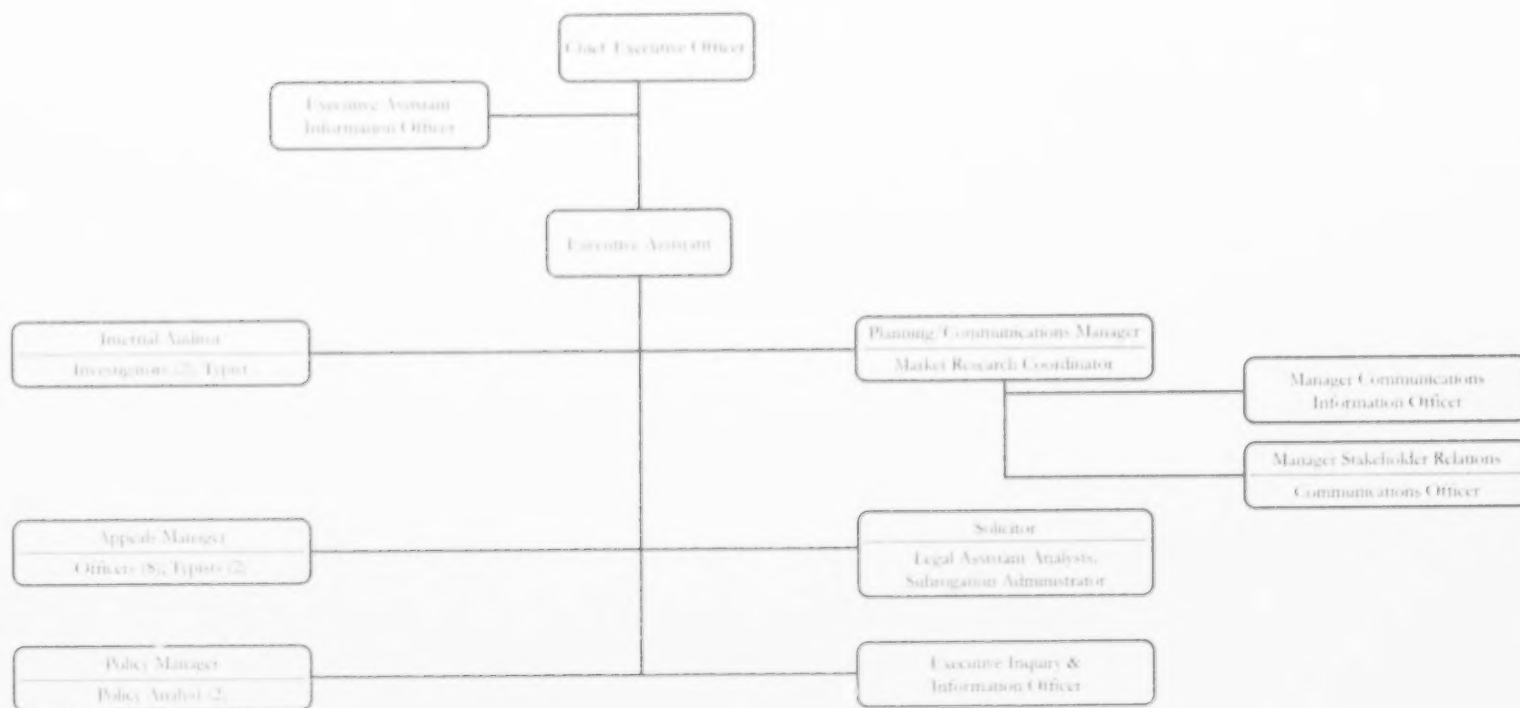
³¹⁹ Saskatchewan Workers' Compensation Board, *Report to Stakeholders 2003*, p. 19.

team-based management structure is more concentrated on managing team member inadequacies than maximizing team member strengths. The structure is not functioning as intended to deliver a "high-performance" culture, but rather is drifting back to isolated decision making with workers and employers not conscious that they are being serviced by a team but rather individuals who rotate through a worker's claim file similar to the past experience of the CSR (Client Service Representative) du jour.

Recommendation:

The Board undertake, complete and publish within one year a thorough evaluation of the effectiveness of its team-based case management measured against the goals and objectives it intended to achieve by adopting team-based case management.

Fig. 78: Chief Executive Officer Direct Reports Other Than Three Vice-Presidents



5.11 Office of the Worker's Advocate

The statute allows the Minister to employ a Worker's Advocate who may assist any worker or any dependent of a worker with a claim. The performance of the Office of the Worker's Advocate reflects on the public perception of the performance of the workers' compensation program.

Performance failure in the Office of the Worker's Advocate diminishes worker access to benefits, erodes fairness in the system and public confidence in the workers' compensation program.

The Minister of Labour, not the Board, is accountable for the effectiveness and efficiency of the Office.³²⁰ The employees in the Office are employees in the Department of Labour. The Minister is responsible to decide about the required resources for the Office and their use.

The cost of the Office of the Worker's Advocate is part of the administration of the workers' compensation program.³²¹

Over the years, the Office of the Worker's Advocate has struggled to remain current with the demand for its services. In 1986, the Committee of Review reported "unmanageable backlogs" of nine months undermining the intended role of the Worker's Advocate.³²² In 1996,³²³ the Committee of Review was concerned with the Office and its backlog.³²⁴

In 2001, the Committee reported the Office had the worst response time in Canada.³²⁵ The Committee recommended the Board provide the Office of the Worker's Advocate with electronic access to its file. This has happened.

The Committee recommended the Board and the Office improve their relationship and the Board report on the relationship and communication at each annual meeting. This has happened. It has been so successful that there is little demand for regular meetings between the two, although a structure has been put in place to maintain communication.

The Committee recommended the Minister take the steps necessary to ensure workers receive timely service from the Office of the Worker's Advocate. This was done.

Happily, this Committee can report that workload, backlog and dialogue with the Board do not continue to be significant issues in the Office of the Worker's

³²⁰ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, s. 161.

³²¹ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, ss. 117(h).

³²² *Report of the Workers' Compensation Act Committee of Review, 1986*, p. 69.

³²³ *Report of the Saskatchewan Workers' Compensation Act Committee of Review, 1996*, pp. 70 - 72.

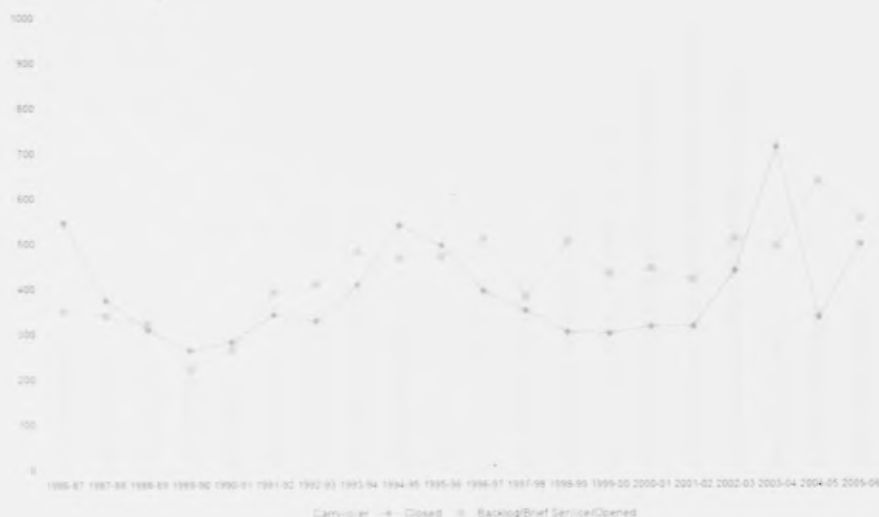
³²⁴ *Report of the Saskatchewan Workers' Compensation Act Committee of Review, 1996*, pp. 70 - 72.

³²⁵ *Saskatchewan Workers' Compensation Act Committee of Review 2001 Report*, p. 45.

Advocate, at the Board or in the submissions and public representations we heard.

Since 2001, there has been a dramatic reduction in the backlog of cases waiting for service in the Office of the Worker's Advocate. The wait for service has been shortened from over two years to approximately two months.

Fig. 79: Office of the Worker's Advocate Caseload (1986-2006)



This happened with an initial increase in expenditures that was decreased after the first year. The responsible Ministers, Deputy Ministers and staff of the Office of Worker's Advocate are to be commended.

Fig. 80: Office of the Worker's Advocate Expenditures and FTEs (2001-2006)

	<u>2001-02</u>	<u>2002-03</u>	<u>2003-04</u>	<u>2004-05</u>	<u>2005-06</u>
Expenditures	\$487,000	\$553,000	\$523,000	\$524,000	\$524,000
FTEs	9	10	9	9	9

From 2001 to 2005 inclusive, the Ombudsman received five complaints about the Office of the Worker's Advocate. None was "unresolved."

The Department of Labour has a Performance Plan on which it makes annual reports.³⁵ The Committee has concluded, in light of the recent performance of

³⁵ Saskatchewan Labour, 2006-07 *Saskatchewan Provincial Budget Performance Plan*, <http://www.labour.gov.sk.ca/annual%20reports/Labour192006-2007.pdf> (January 3, 2007).

the Office of the Worker's Advocate, the Department should set and publish standards for timely service against which the Office's performance can be reported and additional funding to maintain and restore services can be explained and justified.

Recommendation:

The Department of Labour and Office of the Worker's Advocate develop and publish objectives within the Department's Performance Plan and ensure adequate funding is recovered from the Workers' Compensation Board to achieve and maintain the service levels necessary to meet the objectives.

5.12 Access to Medical Review Panels

Board denial of a worker's request for medical examination by an independent panel of specialists appropriate for the nature of the medical condition leaves the worker with no recourse other than the courts.

In 2004, the Court of Queen's Bench found that the Board's decision in 2002 to deny Ronald Lewis access to a second medical review panel was patently unreasonable. There had been a medical review panel in 1997, but Mr. Lewis' physician disagreed with its conclusions. The Board did not accept the court's decision to refer him for examination by a second medical review panel. Instead, the Board appealed and the Court of Appeal reversed the lower court's decision.³²⁷

Differences of opinions arise between health care professionals about medical questions. From 1994 to 2006, when such a difference arose between a medical officer of the Board and another health care professional, the Board had a policy and procedure that the Board could convene three health care professionals as a "Medical Board" to resolve the difference of opinion. This policy was seldom used and the Board repealed it in 2006.³²⁸

There is only one avenue for a worker to have a binding medical review by health care professionals outside the Board. After "exhausting his rights to a reconsideration or review of a decision by the board," a worker or dependant may "request the board to provide for a medical review panel" to conduct an examination. The medical review panel of specialists sets its own procedures and makes decisions "binding upon the board and worker."³²⁹ Apart from the courts,

³²⁷ *Lewis v. Saskatchewan (Workers' Compensation Board)* [2004] S.J. No. 128 (Q.B.) (Q.L.) reversed [2005] S.J. No. 341 (C.A.) (Q.L.).

³²⁸ Saskatchewan Workers' Compensation Board, "Medical Boards - Repeal", *Policy Manual*, POI, 02/2006, precedes POI, 21/94.

³²⁹ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, ss. 64(2). See also Lee E. Slater, *Inter-jurisdictional Comparison of Medical Review Panels* (SWCB, 1999).

this is the only external decision-maker whose decisions in individual cases bind the Board

The worker's written request for a medical review panel must be accompanied by "a certificate of a physician or chiropractor stating: (a) that, in his opinion, there is a bona fide medical question to be determined; and (b) sufficient particulars of the question to define the matter at issue."³³⁰

The Court of Appeal has observed that requests should not be "assessed in an overly technical way"³³¹ by the Board.

Despite this direction, a recurring complaint has been that the Board is overly technical in refusing to provide panels on the ground that the certificates do not provide "sufficient particulars of the question to define the matter at issue". The number of certificates rejected equals or exceeds the number accepted each year. The view is that the Board jealously guards access to this external review to maintain the exclusivity of its decision-making.

Fig. 81: Medical Review Panels (1998-2005)

	1998	1999	2000	2001	2002	2003	2004	2005
Applications Received	8	7	25	40	27	26	14	22
Certificates Rejected	6	5	15	29	30	23	9	13
Certificates Accepted	7	7	15	30	14	9	8	15
Claims with >1 Certificate	4	3	3	11	12	5	3	6
Panels Examinations	12	12	6	15	29	9	7	11
Original Decision Upheld	n/a	n/a	n/a	6	14	4	3	6
Worker Successful	n/a	n/a	n/a	9	14	3	4	3
Pending	n/a	n/a	n/a	0	1	2	0	2
Nature of Issue for Panel								
Injuries Relationship	n/a	n/a	n/a	10	25	8	6	9
RTW Ability	n/a	n/a	n/a	4	2	1	0	2
PFI	n/a	n/a	n/a	1	2	0	1	0
Total				15	29	9	7	11

When there is a request for a medical review panel, the Board members have dealt with at least one internal review of the file and the worker has exhausted his or her right to a reconsideration or review by the Board. The request is to obtain a binding medical opinion that will change the Board members' last decision. Section 60 states:

³³⁰ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, ss. 60(2) and 2(p) "medical review panel."

³³¹ *Leslie v Saskatchewan (Workers' Compensation Board)* [1997] S.J. No. 586, reversing [1996] S.J. No. 587, leave to appeal to SCC refused November 28, 1996. See also *Lynch v. Workers' Compensation Board* [1997] S.J. No. 310; *Steven v Saskatchewan (Workers' Compensation Board)* [1998] S.J. No. 335.

60(1) A worker who has claimed for compensation or, in the case of a deceased worker, the dependant who claims compensation who has:

- (a) represented to the board that:
 - (i) he suffers or, in the case of a deceased worker, he suffered a greater functional impairment than that decided by the board;
 - (ii) he suffers or, in the case of a deceased worker, he suffered a greater limitation in working capacity than that decided by the board;
 - (iii) he should be or, in the case of a deceased worker, should have been granted compensation for a longer period than the period allowed by the board; or
 - (iv) the decision of the board was based on a physician's report that was erroneous or incomplete; and
- (b) exhausted his rights to a reconsideration or review of a decision by the board;

may, in writing, request the board to provide for a medical review panel to examine him or, in the case of a deceased worker, examine the medical information relating to the deceased worker and specify whether the examination is to be in Regina or Saskatoon.

(2) A request under subsection (1) shall be accompanied by a certificate of a physician or chiropractor stating:

- (a) that, in his opinion, there is a bona fide medical question to be determined; and
- (b) sufficient particulars of the question to define the matter at issue.

The high rate of rejection of certificates provided by physicians or chiropractors intended to give workers access to a medical review panel indicates there is a problem. The physician or chiropractor may not have all the file information the Board has or be familiar with the Board's processes and policies for gaining access to a medical review panel. Frequently, the physician or chiropractor rewords the certificate and the second certificate is accepted by the Board.

The statute does not define "bona fide medical question." The Board's policy states:

- 2. A request for a Medical Review Panel will be made in writing and will include a certificate from a physician or chiropractor stating there is a clear medical question to be determined (not an adjudicative issue), the specific medical position of the WCB which is in contention and why that position is medically in error.
- 3. Upon receiving the request and certificate, the Board will determine if the legislated requirements have been met. The injured worker and all interested parties will be provided the Board's decision in writing as to whether a Medical Review Panel will be convened.¹³²

¹³² Saskatchewan Workers' Compensation Board, "Medical Review Panels", *Policy Manual*, POL 20/2001.

This is an area of the administration of the statute where clarity and direction should be given for the benefit of physicians, chiropractors, workers and the Board by defining "bona fide medical question" or the sufficiency of particulars to define the existence of conflicting medical positions.

As a complementary matter, the Act should direct that the decision of a medical review panel answers all of the medical questions referred to it. This is not included among the list of requirements in section 64(1).

Recommendations:

Amend section 60 to define the phrase "bona fide medical question" for the guidance of physicians and chiropractors and all the community.

Amend section 64(1) to require a medical review panel certificate include answers to the medical questions included in the enabling certificate under section 60(2).

Although worker access to a medical review panel should be reasonably easy, a worker's request to the Board to provide a medical review panel often follows significant disagreement between the Board and the worker. The issues will be technical and often overlaid with an extended and complex history.

The Board's form of certificate provides little assistance to physicians and chiropractors, who are often busy and frequently confronted with many forms for various organizations and purposes. The persons who acquire knowledge and skill in the statutory and policy requirements and appropriate contents of a certificate are in the Office of the Worker's Advocate.

Recommendation:

The Board adopt the practice of referring workers to the Office of the Worker's Advocate for advice and assistance before rejecting a certificate from a physician or chiropractor accompanying a request for a medical review panel under section 60.

Section 64(2) states: "The decision of the majority of the members of the medical review panel is the decision of the panel and is binding upon the board and the worker."

Differences can arise over the meaning, intent and effect of the decision certificate issued by a medical review panel. The Board has both a policy and administrative procedure for medical review panels. The administrative procedure states:

BACKGROUND

1. The Board has approved policy guidelines for establishing a Medical Review Panel.
2. The following provides guidelines for the chairperson for requesting and responding to additional information on a claim.

PROCEDURE

1. The Director of Board Services or the Assistant to the Board will provide an orientation to each new medical review panel chairperson.
2. Where the panel requires clarification of any matter, only the Director of Board Services or the Assistant to the Board will provide the response. The request must be in writing and the response will also be in writing, with a copy sent to the panel and to the worker or the worker's representative.
3. Should the Board require clarification of any matter in the certificate, the Director of Board Services or the Assistant to the Board will request this from the chairperson in writing. A copy of the request will be forwarded to the worker or the worker's representative.
4. Should amendments to the certificate of decision be required, the amendments are to be added and initialed by each panel member. Where significant changes require a new certificate to be written, the amended copies must be signed by all members of the panel.

This procedure provides for Board access to medical review panels to clarify any matter in a decision certificate, but does not provide equal access to workers. It contemplates there can be "significant changes" to a decision by a medical review panel after it has made its final decision. Caution must be exercised that any request for clarification does not amount to an appeal or request for rehearing through the provision of new or additional information.

If there is to be access to a medical review panel for clarification of a binding decision it has made, that access should be equally available to the worker. However, the Committee's view is that there should be no further engagement of the medical review panel after it has made its decision unless both the Board and the worker agree there may have been a slip or oversight that requires correction or clarification by the medical review panel and agree on the further question to be posed to the medical review panel.

Recommendation:

The Board discontinue the practice of unilateral requests for clarification of medical review panel decisions and amend its policy and procedure to state that any request to a medical review panel for clarification of a decision must be made jointly by the Board and worker.

6. VOCATIONAL REHABILITATION AND RETURN TO WORK

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6.01 Diminishing the Permanent Consequences of Injury and Illness

The Saskatchewan workers' compensation program seeks to prevent employment related injuries and illness, compensate disabled workers adequately and equitably, and rehabilitate and return workers to employment. Following the path breaking change in 1980 from medically rated life time pensions to earnings loss replacement, the 1992 Committee of Review said: "Rehabilitation and retraining form the foundation of the workers' compensation system."¹¹⁵

Employment related injury and illness can result in permanent, partial or total disability after the worker achieves maximum medical improvement. Subject to

¹¹⁵ *A Report of the Workers' Compensation Act Review Committee August 1992*, p. 9.

minimum compensation amounts³³⁴, the period prior to the injury is used to determine the worker's pre-injury earnings and to calculate cash compensation benefits. Only to a limited extent are the individual worker's potential earnings used to determine long-term cash compensation.³³⁵

Some cash benefits are based on the severity and duration of the disability, such as permanent functional impairment awards and annuity accounts. Some cash benefits are based on needs arising from the disability, such as independence and clothing allowances.

Workers with relatively serious injuries and illness may suffer permanent consequences, such as persistent pain and suffering and an ongoing need for medication, medical care and rehabilitation.

There can be a permanent physical impairment that causes functional limitations, such as hearing, walking, lifting and exerting. There may be permanent limitations in mental and emotional function.

The permanent consequences from physical, sensory, mental and emotional impairments and accompanying functional limitations cause disabilities that affect work and life activities away from work. There can be a loss of capacity for non-work activities such as household tasks, family activities and recreation. The workers' compensation program provides compensation for the permanent non-work consequences through medical aid, permanent functional impairment cash awards, independence and clothing allowances and expenses. It uses the extent of the permanent functional impairment as the predictor or surrogate for the extent of the non-work consequence. The Board can diminish the non-work consequences and seek to restore independence through training and home and automobile modifications.³³⁶

Work and employment is a fundamental aspect of each person's life. It is the way most people support themselves and their families and meet their community obligations. It is more than a job. It is an expression of personal dignity, identity, self-worth and emotional well-being and a way to contribute to the common good.

A permanent disability causes a loss of earning capacity that results in an actual wage loss. The central issue for determining long term, on-going loss is whether cash compensation benefits are to be based on presumed loss of earning capacity or actual wage loss.

The Board's Early Intervention Program seeks to intervene at the right time with the right program after an injury or illness to reach maximum medical

³³⁴ Saskatchewan Workers' Compensation Board, "Minimum – Compensation Rate/Weekly Earnings", *Policy Manual*, POI, 18/2001, and Saskatchewan Workers' Compensation Board, "Minimum Compensation – 2006 – S.75", *Procedure Manual*, PRO 55/2005.

³³⁵ Saskatchewan Workers' Compensation Board, "Verification of Earnings", *Policy Manual*, POI, 19/98.

³³⁶ Saskatchewan Workers' Compensation Board, "Modifications – Residential, Vehicle and Workplace", *Policy Manual*, POI, 02/2002.

improvement as soon as possible and to prevent or minimize a permanent functional impairment. The nature and quality of health care, the worker's prior health status and prior physical condition have to be considered and will impact the individual's assessment and medical and physical rehabilitation program.

Vocational rehabilitation is the intervention that addresses the effects of functional limitations on the loss of earning capacity and the worker's actual wage loss. For each individual, age, prior education and work experience will impact the nature and extent of vocational rehabilitation that is available to restore pre-injury earning capacity or diminish loss of earning capacity.

The extent to which there will be an actual loss of pre-injury wages will be influenced by the pre-injury employer's return to work practices and reasonable accommodations to enable the worker to return to work. The context will be a local, regional or provincial labour market that has high or low unemployment and high or low demand for the worker's skills.

All of these factors, whether within or beyond the control of the individual or the Board, can affect the ultimate loss of earning capacity and actual wage loss of a permanently disabled worker.

Since 1980, the Saskatchewan workers' compensation program no longer uses the medical rating of the extent of physical impairment as the predictor or surrogate for future wage loss. The focus now is on the extent of the disability and its consequences on loss of earning capacity and wage loss.

The Saskatchewan workers' compensation program uses loss of earning capacity as the predictor or surrogate for actual future wage loss. This is why there are recurring issues before successive Committees of Review about the Board's practice when it "deems" that a worker will be able to earn certain wages in the future. Subject to minimum and maximum cash compensation amounts, the worker receives a benefit based on pre-injury earnings and an estimation of the worker's future earning capacity, regardless whether the worker actually earns what he or she is estimated to have the capacity to earn.

One of the effects of using estimation or deeming, rather than actual wage loss, is that the period during which a claim is kept open and actively managed can be shortened.

6.02 Statutory Framework, Participant Duties and Board Process

Vocational rehabilitation is rehabilitation "intended to return injured workers to suitable employment, and includes counselling, assessment, career planning, educational upgrading, education, training, on-the-job training, assistance with job search and assistance with job placement."³⁷

³⁷ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, ss. 2(s.2).

The Board has a duty to "consult and co-operate with workers and surviving dependent spouses in the development of rehabilitation plans intended to return workers or dependent spouses to positions of independence in suitable productive employment."³³⁸

Injured workers have a duty to:

- (a) take all reasonable action to mitigate the loss of earnings resulting from an injury; and
- (b) where the circumstances require, co-operate with the board in the development of a rehabilitation plan that is intended to return the worker to a position of independence in suitable productive employment.³³⁹

The Board is in a unique position to discharge a responsibility that no one else can. The Board has the knowledge about the worker's injury and limitations and experience with rehabilitation and return to work. It has a role as facilitator and guardian of return to work for injured workers.

The Board must be proactive, take initiative and be energetic in facilitating return to work. It must follow-up to ensure the work is both suitable and productive. It is implicit that the work must be safe for the worker and employer and the employment sustainable.

The Board's vocational services include developing a vocational direction and individualized vocational plan with activities, time frames and costs leading to return to work; modified return to work and employer accommodation; special services for personal and other care for injured workers unlikely to return to work; and other services provided on request by out of province or other injured workers.

The Board has time-based standards of practice for vocational rehabilitation services.

- Referrals – within 3 to 6 months of injury
- Caseload – goals of 50
- Treatment Clinics – work with worker and providers
- Phone Contact – 48 hours
- Itinerary / Schedule – 1 week
- Face-to-Face Meeting – 20 working days with profiles
- Individual Vocational Plan – 22 weeks (5 months)

The following flow chart includes some of these practice standards.

³³⁸ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W 17.1, ss. 22.1(1)(d).

³³⁹ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W 17.1, s. 51.1.

Fig. 82: Vocational Services Process and Time-Based Goals Flow Chart (2006)



6.03 Board Policy and Recent Experience

In 2004, the Board adopted published policy to outline guidelines for the provision of vocational rehabilitation services and programs intended to return workers to positions of independence.¹⁰⁰ The policy defines both “suitable” and “productive” employment.

Suitable employment: means a position or occupation in which the worker is employable, given his/her compensable and non-compensable restrictions.

Productive employment: means work that contributes meaningfully to the operation of the business, thereby providing purposeful tasks to the worker.

The policy has a hierarchy of objectives:

Objective 1 – Same Work with Same Employer (worker is able to return to pre-injury job, with some restrictions). Wherever possible, the employer should be encouraged to accommodate the worker in graduated return to work or modified duties.

Objective 2 – Different Work Same Employer (restrictions preclude returning to the pre-injury position). The VRS [Vocational Rehabilitation Specialist] will undertake any additional vocational testing or skills analysis necessary to determine if the worker has the skills, aptitudes and experience that are transferable to alternate work.

¹⁰⁰ Saskatchewan Workers' Compensation Board, “Vocational Rehabilitation – Programs and Services”, Policy Manual, P.O. 06/2004.

Fig. 8.2: Vocational Services Process and Time-Based Goals Flow Chart (2006)



6.03 Board Policy and Recent Experience

In 2004, the Board adopted published policy to outline guidelines for the provision of vocational rehabilitation services and programs intended to return workers to positions of independence.¹⁰ The policy defines both "suitable" and "productive" employment.

Suitable employment means a position or occupation in which the worker is employable, given his/her compensable and non-compensable restrictions.

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The policy has a hierarchy of objectives:

- Objective 1: Same Work with Same Employer (worker is able to return to pre-injury job, with some restrictions). Wherever possible, the employer should be encouraged to accommodate the worker in graduated return to work or modified duties.
- Objective 2: Different Work Same Employer (restrictions preclude returning to the pre-injury position). The VRS [Vocational Rehabilitation Specialist] will undertake any additional vocational testing or skills analysis necessary to determine if the worker has the skills, aptitudes and experience that are transferable to alternate work.

¹⁰ Work and Injury Compensation Board, "Vocational Rehabilitation - Programs and Services," 2004 Manual P-01-06, 5001.

Objective 3 - Same Work Different Employer (pre-injury employer unable to accommodate in any capacity; alternatives in the same or related industrial sector are considered). Little intervention may be required, but additional job search benefits or employment readiness program may be provided, as necessary.

Objective 4 - Different Work Different Employer (the worker is unable to return to employment in the same or related industry). Vocational exploration will expand to suitable opportunities in other occupational sectors where the worker's existing inventory of transferable skills, aptitudes, and interests may be used.

Objective 5 - Training and Education (existing skills are insufficient to restore the worker to suitable employment). The development of new occupational skills will be considered through academic, technical or on-the-job training programs.

Objective 6 - Self Employment (this may only be offered where all other objectives have been exhausted or it is the only viable option for reaching maximum pre-injury earnings). Generally, this will apply to those workers in remote areas where employment and education opportunities are scarce, the plan is cost-effective compared with other reasonable return-to-work alternatives and there is a high probability of success.

The Board has published policies on return to work plans (general, lay-off and spousal), purchasing equipment and tools and relocation allowances and travel expenses.¹⁴¹

The annual number of internal Board referrals of injured workers for vocational rehabilitation services declined from 2001 to 2004, but increased significantly in 2005.

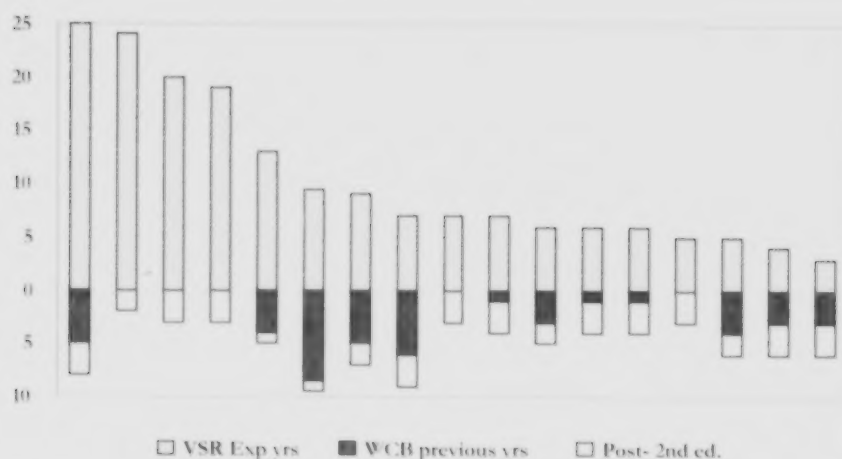
Fig. 83: VR Service Referrals & Approved Individual Rehabilitation Plans (1996-2005)

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Referrals for VR Services	719	700	594	761	719	752	665	625	614	701
Approved IVR Plans	n/a	n/a	n/a	n/a	n/a	n/a	229	397	271	286

The Board employs seventeen vocational rehabilitation specialists in its eight case management teams who provide vocational rehabilitation related services to injured workers and case managers.

¹⁴¹ Saskatchewan Workers' Compensation Board, "Return to Work Plan - Spouse", POL 06/2000; "Return to Work Plan - Layoff", POL 07/96; "Return to Work Plan", POL 08/96; "Equipment and Tools - Vocational Rehabilitation" POL 05/2004; "Relocation Allowances", POL 10/2001; "Injuries, Travelling in Return to Work Programming", POL 12/90, *Policy Manual*.

Fig. 84: Vocational Rehabilitation Specialists Experience, Service and Education



One group of injured workers in need of job search and other assistance when they are unable to return to their pre-injury employment is older workers with limited skills, education and job search experience.

The Board has a policy that:

Where the effects of a work injury result in permanent restrictions that preclude or complicate a return to the pre-injury employment, WCB will provide a worker the appropriate services and programs to:

- Facilitate a return to suitable, productive employment or a status of employability at comparable earning potential with the pre-injury level, and where necessary,
- Address issues of quality of life and independence.³⁴²

The Board has extensive procedures, with accompanying reporting and spending authorizations, once a referral is made for the development of an individual vocational plan in accordance with the process in Figure 82. However, the Committee heard recurring submissions that in individual situations the Board did not act early enough to make timely vocational rehabilitation intervention.

The Board has guides for chronicity that it uses to identify, screen and refer injured workers to its Early Intervention Program. The Board should have a similar guide to assist Case Managers to identify, in a timely manner, persons at risk of being unable to find suitable and productive employment without vocational services.

³⁴² Saskatchewan Workers' Compensation Board, "Vocational Rehabilitation - Programs and Services", *Policy Manual*, POJL 06/2003.

Recommendation:

The Board develop and publish a guide to assist Case Managers to identify injured workers at risk of not obtaining suitable, meaningful and productive employment and implement processes for early and timely referral of these workers to vocational services.

The submissions the Committee received on the appropriateness and adequacy of the Board's vocational rehabilitation services express concern there is an undue reliance by the Board on the outcomes reported by contracted treatment providers in the Early Intervention Program without further communication by the Board with the pre-injury employer or knowledge of the full circumstances of the job demands of the pre-injury employment. There were submissions that the Board does not properly follow-up to assess and ensure the success and durability of the individual vocational plan.

The Board measures the percentage of injured workers who return to work after being declared employable. It has a target of 92%.³¹³ It is laudable and important that the Board has developed, refined and reported on this metric in its balanced scorecard.

The Committee has concluded more must be done for the small percentage of injured workers who require an individual vocational plan. In 2005, it was fewer than 300. They are most often workers with serious or complex injuries who require extensive assistance from the Board, will have a long-term dependency on the Board and for whom return to work failure can be most catastrophic for them and their families. The Board's responsibility to them does not end once they are declared employable.

Recommendation:

Based on investigated, not just reported, return to work circumstances, including visits to the place of employment after return to work, the Board publicly report the outcomes for injured workers who have individual vocational plans in returning to suitable, productive, safe and sustained employment.

The 1992 Committee of Review observed that provision must be made for the termination or reduction of benefits to the worker "who, with the support of the Board, has undergone a course of training of two or more years (in addition to any educational upgrading required to enable the worker to enrol in a course) and has been given a reasonable opportunity to find employment."³¹⁴

Two years was not intended and is not treated by the Board as an absolute limit on the assistance that will be given to each individual.

³¹³ Saskatchewan Workers' Compensation Board, *Report to Stakeholders 2005*, p. 21.

³¹⁴ *A Report of the Workers' Compensation Act Committee of Review, August 1992*, p. 52.

The numbers of vocational rehabilitation training courses provided to injured workers that extend beyond two years are in a following table.

The type and amount of expenditures in a following table provide an overview of the Board's vocational rehabilitation services.

Fig. 85: Training Programs and Number Over Two Years (2001-2005)

	Academic Education Training Allowance		Academic Supplementary Allowance		Post Secondary Tuition Fees and Books		Technical Education Training Allowance		Technical Education Supplement Allowance		Technical Education Books and Supplies		Training on the Job Expense	
	Total Number	Number Over 2 Years	Total Number	Number Over 2 Years	Total Number	Number Over 2 Years	Total Number	Number Over 2 Years	Total Number	Number Over 2 Years	Total Number	Number Over 2 Years	Total Number	Number Over 2 Years
2001	0	0	172	108	13	8	0	0	346	228	65	51	26	18
2002	0	0	190	146	33	24	0	0	515	397	38	36	29	23
2003	0	0	230	190	50	44	0	0	517	432	31	30	31	26
2004	0	0	209	167	34	31	0	0	503	433	27	23	20	19
2005	0	0	222	180	33	29	0	0	437	384	24	23	11	10

Note: The number over 2 years is the number of workers or dependents in a given year that had received at least 2 years of training by some point in that year. If workers or dependents have more than 2 years of training, it is possible they are coded under more than one year.

Fig. 86: Vocational Rehabilitation Service Expenditure and Claims (1996-2005)

Vocational Rehabilitation Services	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Academic Education Training Allowance	\$0.00	\$0.00	\$23,958.24	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Academic Supplementary Allowance	\$16,700.89	\$6,507.35	\$7,324.31	\$17,350.35	\$21,848.38	\$266,257.75	\$344,520.42	\$467,272.39	\$526,717.17	\$429,905.69
Claims	15	14	12	22	26	172	190	230	209	222
Post Secondary	\$195,952.51	\$132,015.88	\$100,255.60	\$105,076.54	\$169,330.71	\$943.93	\$26,121.19	\$58,186.36	\$40,029.41	\$40,031.82

Vocational Rehabilitation Services		1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Tuition, Fees & Books											
Claims		159	143	111	117	110	13	33	50	34	33
Technical Education Training Allowance											
		\$0.00	\$0.00	\$387.55	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Claims		0	0	1	0	0	0	0	0	0	0
Technical Education Supplement Allowance											
		\$57,638.60	\$67,071.45	\$83,829.54	\$104,365.55	\$140,109.29	\$959,005.02	\$1,498,188.53	\$1,582,596.48	\$1,430,008.02	\$1,293,794.95
Claims		61	61	68	78	90	346	515	517	503	437
Technical Education Books & Supplies											
		\$490,172.68	\$437,030.47	\$498,133.00	\$585,963.81	\$648,287.84	\$42,837.19	\$30,503.33	\$13,175.14	\$17,807.80	\$19,120.77
Claims		296	279	241	230	269	65	38	31	27	24
Job Search											
		\$0.00	\$0.00	-\$10,566.30	\$0.00	\$0.00	\$0.00	\$0.00	-\$1,226.40	\$0.00	-\$10,865.46
Claims		0	0	2	0	0	0	0	1	0	1
Wage Loss Assistance											
		\$1,042.58	\$0.00	\$3,169.40	\$0.00	\$0.00	\$0.00	\$0.00	-\$107.26	\$0.00	\$731.42
Claims		1	0	2	0	0	0	0	1	0	1
Training on the Job Expense											
		\$103,221.09	\$102,074.88	\$74,044.78	\$79,851.97	\$77,216.13	\$58,565.77	\$112,561.57	\$74,076.35	\$40,541.88	\$38,715.03
Claims		37	34	34	33	33	26	29	31	20	11
Travel & Sustenance Allowance											
		\$100,777.03	\$99,656.22	\$91,498.30	\$82,278.34	\$99,978.72	\$240,540.57	\$263,521.62	\$234,172.01	\$347,900.17	\$381,431.57
Claims		173	182	143	132	161	277	313	271	277	257
Technical Aids											
		\$14,153.31	\$32,033.02	\$48,950.09	\$74,479.89	\$30,920.52	\$106,331.13	\$84,526.43	\$142,161.34	\$129,603.27	\$90,906.89
Claims		38	46	45	65	67	110	153	188	194	169

**Vocational
Rehabilitation
Services**

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
<i>Modifications</i>										
Work Site	\$14,253.06	\$8,030.78	\$6,676.48	\$29,483.36	\$37,245.03	\$47,807.93	\$66,472.92	\$64,835.86	\$24,090.20	\$16,617.11
Claims	13	18	10	3	13	14	17	22	20	16
<i>Modifications -</i>										
Residential	\$37,715.89	\$77,645.61	\$228,251.14	\$114,537.63	\$26,169.21	\$206,158.35	\$14,067.25	\$243,105.83	\$135,341.46	\$139,217.69
Claims	4	3	2	3	2	1	3	3	1	6
<i>Lifts & Ramps</i>										
Residential	\$2,354.10	\$867.74	\$24,900.00	\$6,015.19	\$27,457.93	\$79.15	\$1,580.00	\$2,145.21	\$1,575.00	\$3,120.00
Claims	4	3	2	3	2	1	3	3	1	6
<i>Lifts & Modifications -</i>										
Vehicles	\$2,160.98	\$54,560.54	\$5,043.78	\$28,163.10	\$14,101.22	\$46,924.14	\$17,749.37	\$40,331.68	\$14,305.00	\$1,784.46
Claims	9	22	11	12	18	15	20	23	12	16
<i>Psychological</i>										
Testing	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$175.00	\$0.00	\$0.00
<i>Personal Care -</i>										
Level 1	\$58,364.02	\$87,587.19	\$117,749.49	\$36,039.37	\$161,152.35	\$196,539.41	\$18,420.01	\$187,051.17	\$174,774.26	\$217,654.34
Claims	75	78	88	96	97	101	143	164	184	225
<i>Personal Care</i>										
Level 2	\$19,381.62	\$20,344.55	\$23,727.93	\$30,671.05	\$814.71	\$43,828.85	\$60,077.37	\$235,070.30	\$98,176.14	\$95,258.32
Claims	21	17	21	20	27	37	45	53	59	54
<i>Rehab Grants</i>										
	\$76,851.35	\$121,954.05	\$85,207.55	\$139,081.50	\$327,055.01	\$903,113.65	\$961,120.65	\$594,355.86	\$398,347.84	\$85,385.15
Claims	52	73	64	87	95	138	136	109	96	51
<i>Personal Care -</i>										
Level 3	\$21,905.30	\$22,470.00	\$18,165.61	\$21,220.59	\$27,593.37	\$23,297.03	\$62,330.95	\$189,041.41	\$71,438.53	\$69,475.49
Claims	11	11	11	9	11	11	15	19	14	20
<i>Personal Care -</i>										
Level 4	\$16,390.00	\$3,048.54	\$17,278.36	\$59,189.70	\$95,218.72	\$159,754.54	\$138,254.38	\$46,857.69	\$17,368.73	\$4,759.99
Claims	6	5	6	8	13	18	18	15	14	11
<i>Relocation Expenses</i>										
	\$20,355.95	\$35,381.01	\$25,047.70	\$17,234.22	\$51,470.57	\$43,147.51	\$56,537.42	\$51,076.72	\$47,124.99	\$53,359.05

*Professional Services include out of province vocational rehabilitation providers; vocational assessments and evaluations (testing); psychometric testing (I.Q., Personality, etc.); occupational specific testing such as driver's exams and safety training; tutoring services; supported employment (helper's wages, work assessment/hardening, etc.); transferable skills analysis (Quick Noe Pro); ergonomic assessments and jobsite analysis; employment preparation services; business consultant for self employment; and architect consultant for accessibility assessment and home modification; and other service outside the expertise of the Boards VRS

** These payments reflect changes in Board practice coding certain wage loss payments as vocational rehabilitation expenditures or as cash compensation benefits for which workers are entitled to have 10% set aside in an annuity account.

6.04 Estimating Future Earnings Capacity or Potential – “Deeming”

The Board has exclusive jurisdiction to determine “the degree of diminution of earning capacity caused by an injury.”³⁴⁵ The Board determines the degree of an individual’s diminution of earning capacity caused by an injury in an estimated earnings capacity report prepared by a vocational rehabilitation specialist for the individual injured worker. The annual number of estimated earnings capacity reports has increased in recent years.

Fig. 87: Estimated Earnings Capacity Reports (1996-2005)

1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
171	235	164	170	151	139	220	284	239	267

In the Board’s policy on determining loss of earnings, it defines “earnings capacity” as “the amount of income a worker could be expected to generate, post injury, through the performance of suitable employment given the physical restrictions and the unique vocational profile of that worker.”³⁴⁶

Often an injured worker returns to the pre-injury employer after a short absence or obtains stable employment with another employer. In these situations, the worker’s actual earnings and verifiable wage increases are the basis of the estimate of future earnings capacity.

Some injured workers are estimated to have no, or very limited, future earnings capacity.

Often injured workers are estimated to have an earnings capacity working full-time hours at minimum wage with no realistic possibility of earning more than the minimum wage. Each increase in the minimum wage will increase their estimated earning capacity and, in this way, decrease the amount of cash earnings replacement compensation paid by the Board.

Sometimes the estimate is that the worker will obtain employment at a minimum wage job, but the hourly rate will increase at a rate faster than the minimum wage has increased.

³⁴⁵ Government of Saskatchewan, *The Workers’ Compensation Act, 1979*, c. W-17 s. 22(1)(a).

³⁴⁶ Saskatchewan Workers’ Compensation Board, “Determination of Loss of Earnings”, *Policy Manual*, POI-14/2001.

Fig. 88: Provincial Minimum Wage (1982-2007)

	<u>Minimum Wage</u>	<u>% Increase</u>	<u>Cumulative % Increase Since 1982</u>	<u>Cumulative CPI % Increases Since 1982</u>
1982	\$4.25			
1985	\$4.50	5.88% ^a		14.7% ^a
1990	\$4.75	5.56% ^a	11.76% ^a	40.9% ^a
1991	\$5.00	5.26% ^a	17.65% ^a	48.2% ^a
1992	\$5.35	7.00% ^a	25.88% ^a	49.7% ^a
1996	\$5.60	4.67% ^a	31.76% ^a	63.0% ^a
1999	\$6.00	7.14% ^a	41.18% ^a	70.2% ^a
2002	\$6.30	5.00% ^a	48.24% ^a	85.2% ^a
2003	\$6.65	5.56% ^a	56.47% ^a	89.4% ^a
2005	\$7.05	6.02% ^a	65.88% ^a	97.9% ^a
2006	\$7.55	7.09% ^a	77.65% ^a	101.9% ^a
2007	\$7.95	5.30% ^a	87.06% ^a	n/a

Sometimes the estimate of future earnings capacity is that the worker will obtain employment at an entry level hourly wage rate that will increase by \$0.50, \$0.75, \$1.00 or more per hour or at the Consumer Price Index each year for several future years. The annual increase can be above 10%.

The last Committee observed:

Inflated or unrealistic estimations of future earnings absolves or diminishes the Board's responsibility and leaves an injured worker and family clinging to a subsistence life for both its adults and children.

The Board has adopted a practice of estimating or deeming an injured worker is capable of earning a graduated amount in the coming years. The amount of the increments is often far in excess of the experience of others in the workforce. The Board estimates that injured workers will work full-time, even though there is a higher incidence of part-time and casual employment in the labour market.³⁴⁷

All aspects of an estimation of the future potential or probable earnings capacity should be reasonable, realistic and demonstrably justifiable. There should be follow-up review by the Board to confirm, based on experience that the original estimate was, and continues to be, reasonable.

Because the Board pays cash compensation to replace wage loss, it must maintain a system of on-going review of each worker's actual or estimated earnings when the Board is paying cash compensation benefits to replace lost earnings. There can be a difference between the information used to determine the amount of cash compensation and what is actually earned or reported by the worker. The Board has a process to verify actual earnings when it pays long-term earnings replacement, which is payment when:

³⁴⁷ *Saskatchewan Workers' Compensation Act Committee of Review 2001 Report*, p. 40.

1. a worker is in receipt of wage loss benefits for a period in excess of 12 consecutive months or;
2. a worker is unable to return to pre-injury employment and wage loss benefits are paid on a monthly basis versus the bi-weekly method used to pay short term loss or;
3. a dependant spouse is in receipt of benefits under Section 83(4).³⁴⁸

Under the Board's policy:

1. When a worker or dependant spouse is in receipt of long term earnings replacement, an annual verification of earnings will take place. The exemption status and whether Canada Pension Plan benefits are received will also be verified.
2. The verification will be completed to ensure information used for the purpose of calculating compensation entitlement is reflective of the actual or estimated earnings of a worker or dependant spouse. The verification will be completed on an annual basis or until the information reported by all workers and dependant spouses closely reflects earnings used for compensation purposes. When this occurs, verification must be completed on each claim at least once every three years.
3. Information from Canada Revenue Agency will be used for this purpose; however, if proof of total earnings from all sources can be provided through alternate means, this may be used. Operations staff will determine the method of verification and where there is non-compliance to the request or consent for information, will have the discretion to determine the compensation payable without such verification.³⁴⁹

It is through this verification process that CPP and QPP disability benefits are identified and off-set. The amount of long-term earnings loss replacement paid will be reduced if there has been:

- an increase in Canada Pension Plan Disability benefits;
- a decrease in the Consumer Price Index;
- a decrease or removal of a spousal or dependent deduction for income tax purposes; or
- an increase in earnings capacity.

An individual injured worker can have two or more of these happen in one year.

Fig. 89: Compensation Decreased Due to Increased Earnings Capacity (2002-2005)

<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
387	149	227	325

³⁴⁸ Saskatchewan Workers' Compensation Board, "Verification of Earnings", *Policy Manual*, PG 04-19/98

³⁴⁹ Also see *Procedure Manual*, PG 1-19/98

In its annual review of long-term earnings replacement payments, the Board has increased the cash payment to reflect a decrease in CPP Disability benefits, an increase in the Consumer Price Index or a change in number or status of dependent children and spouse.

As improbable as it may seem, from 2000 to 2005 no injured worker received an increase in payment because there was a decrease in the injured worker's earning capacity.

The estimated future earnings capacity of individual injured workers is frequently the subject of appeal within the Board and to the Board members.

Recommendation:

To ensure a Board estimation of an individual injured worker's future earning capacity is not based upon unreasonable hypothetical assumptions, the Board adopt policies or procedures that confirm any estimated increases in earning capacity for individual injured workers are realistic, reasonable, achievable and supported by information that justifies the estimation and that provide that the Board follows-up to confirm each estimate was reasonable.

6.05 Relocation for Suitable Employment

The 1992 Committee of Review observed that a wage loss or earnings replacement system assists the injured worker to attain independence, but requires "a comprehensive and aggressive program having as its object the return of the worker to his or her former occupation or to some alternative suitable and available employment."¹⁵⁰ In "isolated cases" when workers are unwilling to accept suitable and available employment or to retrain, benefits could be suspended.¹⁵¹

Section 104(4) was enacted in 1993. Under this section, the Board has the discretion to "terminate or reduce payment to a worker of any compensation" when "the worker's loss of earnings is not related to the effects of the injury."¹⁵² This can have nothing to do with whether a worker is or is not cooperating with the Board. It can be the effects of the provincial or regional economy.

Under Board policy:

A worker is considered employable when the following criteria are met:

- a. The worker has acquired the skills and abilities to competitively pursue suitable productive employment.
- b. The work can be performed without endangering the worker's safety and the safety of others;

¹⁵⁰ Saskatchewan Workers' Compensation Act Committee of Review 2001 Report, p. 7.

¹⁵¹ Saskatchewan Workers' Compensation Act Committee of Review 2001 Report, p. 32.

¹⁵² Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W 17.1, ss. 104(4)(a).

- c. The work is available in the worker's immediate locale or in a location to which the worker may reasonably commute or relocate.³⁵³

The Board's policy in determining loss of earnings includes relocation assistance:

Where workers live in an area of low economic activity and are unable to realize their earning capacity, the WCB will provide for relocation to the closest community that offers suitable, productive employment at the appropriate wage level. Should the worker decide not to relocate, the WCB will continue to extend wage loss payments for a period of two years. At the end of the two-year period, the VRS [Vocational Rehabilitation Specialists] will determine the worker's earning capacity with reference to occupations which exist in the identified closest community and benefits will be reduced accordingly. Should the worker request relocation assistance after the two-year period, the relocation must result in a further reduction in the earnings loss being paid to the worker.³⁵⁴

The Board does not keep a record of the circumstances or the number of workers who refuse relocation and for whom the Board extends benefits to replace earnings loss for two years and then estimates the worker's earning capacity with reference to the closest community.

The Board's policy on a reasonable commuting distance is:

Where relocation is not being considered, a 75 km. radius may be regarded as reasonable commuting distance for employment. When considering a reasonable commute, factors such as the worker's physical ability to drive, the starting wage and wage potential of the employment will be taken into account. For those workers who have historically traveled further for employment, the expectation will be in keeping with that history, but with consideration to the above factors. There is no entitlement to travel allowances related to travel to and from post-injury employment. The absence of a driver's license, for reasons other than a physical inability to drive, will not be a factor when determining reasonableness.³⁵⁵

The question of a reasonable commuting distance for employment can be very specific to the individual's circumstances, the location where he or she lives and the nature of the available employment. It appears the 75 km rule was adopted from a past guideline used by the former Unemployment Insurance Commission to assess whether there was good cause to refuse available employment.

³⁵³ Saskatchewan Workers' Compensation Board, "Vocational Rehabilitation – Programs and Services", *Policy Manual*, POI, 06/2001.

³⁵⁴ Saskatchewan Workers' Compensation Board, "Determination of Loss of Earnings", *Policy Manual*, POI, 14/2001.

³⁵⁵ Saskatchewan Workers' Compensation Board, "Determination of Loss of Earnings", *Policy Manual*, POI, 14/2001.

That Commission has evolved an approach and rules that considers several factors specific to the individual's situation and available transportation in the community.³⁵⁶ Those factors are similar to the factors in the Board's policy.

6.06 Return to Work and Prescribed Medication

Some medication can affect an individual's ability to perform certain functions. Some can cause inattention, drowsiness and other effects that can be a health and safety hazard. Some can impair a person's ability to operate a vehicle or other equipment.

An injured worker's health care provider is responsible to ensure a worker taking prescribed medication is aware of the effects. It is the health care provider's responsibility to assess the effects of the medication and how the medication impacts an individual's return to work plan. Board employees are not equipped or expected to decide whether a worker can drive or operate equipment while taking one or more prescribed medications.

The Board's focus is on a worker's fitness to return to work. The return to work must be safe and reasonable. The work must be suitable, meaningful and productive and within the worker's capabilities.

The Board has access to some knowledge about the worker's medication through the medical aid payments it makes for injured workers, which include drug therapy. If Board employees have concerns that prescribed medication affects the worker's fitness or capability to return to work safely, they must speak to the worker and contact the care provider or speak to the Board's Medical Consultants about their concerns.

6.07 Employer Duty to Accommodate

Under *The Labour Standards Act*, employers have a general duty to accommodate injured workers, where reasonably practicable:³⁵⁷

- 44.3(1) Where an employee becomes disabled and the disability would unreasonably interfere with the performance of the employee's duties, the employer shall, where reasonably practicable, modify the employee's duties or reassign the employee to another job.
- (2) In any prosecution alleging a contravention of this section, the onus is on the employer to prove that it is not reasonably practicable to modify the employee's duties or reassign the employee to another job.

³⁵⁶ Services Canada, *Disability Benefits Review and Policy of W-6*, Digest of Benefit Entitlement Principles – Chapter 9, <http://www.bls.ca/eng/bsa/entire/bsa6/9/9-9.html#9.9.1> (February 5, 2007).

³⁵⁷ Government of Saskatchewan, *The Labour Standards Act*, s. 44.3.

Under human rights law, employers have a duty, following individualized assessment, to accommodate temporarily and permanently disabled employees to the point of undue hardship.

The Board's vocational rehabilitation policy has as its third objective in the hierarchy of objectives to look to return an injured employee to work with an employer other than the pre-injury employer only when the pre-injury employer is "unable to accommodate in any capacity."³⁵⁸

The Board is uniquely placed, with its responsibility to assist and facilitate the return to work of injured workers, to educate employers about their duty to accommodate and to assess and facilitate temporary and permanent accommodations. It is uniquely placed to provide financial incentives through its vocational rehabilitation programs, services and expenditures to assist employers explore and implement accommodations.

After many years of evolution and restatement by the Supreme Court of Canada, the employer's responsibilities and obligations to accommodate employees who experience a temporary or permanent disability due to an employment related injury or illness is so well established in human rights and other judicial decisions that it should be stated in the Act for ease of reference and effective administration.

Recommendation:

Amend section 52 to include a concise statement of the employer's responsibility with respect to facilitating the return to work of injured workers and the employer's duty, as enunciated by the Supreme Court of Canada, to accommodate workers with disabilities to the point of undue hardship.

6.08 Worker Duty to Cooperate and Suspension or Termination of Payment

An injured worker who fails to co-operate, without good reason, may have cash compensation payments reduced or terminated. Sections 104(4) and 51.1 state:

- 104(4) The board may terminate or reduce payment to a worker of any compensation based on the worker's loss of earnings:
- (a) where the worker's loss of earnings is not related to the effects of the injury; or
 - (b) without limiting the generality of clause (a), if:
 - (i) without good reason, the worker is not available or declines to accept a bona fide offer of employment in an occupation in which the worker, in the opinion

³⁵⁸ Saskatchewan Workers' Compensation Board, "Vocational Rehabilitation - Programs and Services", Appendix A, *Policy Manual*, P.O. 06/2004.

of the board in consultation with the worker, is capable of engaging;

- (ii) without good reason, the worker fails to co-operate in, or is not available for, a medical or vocational rehabilitation program that has as its objective returning the worker to suitable productive employment;
- (iii) in consultation with the worker, the board has designed and provided to the worker, at the expense of the board, a vocational rehabilitation program, and the worker has been allowed a reasonable time to obtain employment after completing the program;
- (iv) the worker voluntarily:
 - (A) accepts employment in an occupation that has a lower rate of pay than an occupation in which the worker, in the opinion of the board in consultation with the worker, is capable of engaging; or
 - (B) withdraws from the labour force for reasons other than the effects of the injury; or
- (v) the worker fails to comply with section 51.1.³⁰⁰

51.1 A worker shall:

- (a) take all reasonable action to mitigate the loss of earnings resulting from an injury; and
- (b) where the circumstances require, co-operate with the board in the development of a rehabilitation plan that is intended to return the worker to a position of independence in suitable productive employment.³⁰¹

The Board has the same power over a dependent spouse after the "expiration of entitlement to compensation" at the end of five years or when the youngest dependent child reaches 16 or 18 years of age.³⁰² During this time, "... the board may provide to that dependent spouse the same counselling and vocational assistance as would be provided to a worker in order to enable the dependent spouse to enter the labour force and become self-sufficient".

A dependant spouse did not suffer the workplace injury and is in a different situation than an injured worker. Attaining independence, self-sufficiency and entering the labour market has different challenges for dependent spouses, who may, or may not, have been providing an income to the household prior to the death of the spouse.

³⁰⁰ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W 17 I, ss. 104-4.

³⁰¹ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W 17 I, s. 51.1.

³⁰² Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W 17 I, ss. 83-4 and ss. 83-5.

The last Committee of Review made observations and recommendations about the Board's use of its authority to suspend or terminate benefits for lack of co-operation:

The Board does not know how often its Client Service Representatives threaten to use, or actually use, this punitive power. Payments may be terminated for any number of reasons: a worker returns to work; a worker is deemed to have been cured and able to return to work; a worker is deemed to have the capability to earn his or her pre-injury wages; and so on. The worker may dispute these decisions and appeal. In the meantime, the worker and their family have no income.

In the exercise of the power under subsections 104(4) and (5), the Board is saying the worker or dependent spouse has been guilty of conduct that warrants reducing or discontinuing payments at a time when that person is still entitled to receive compensation, medical treatment and vocational rehabilitation assistance. The worker or dependent spouse may not agree he or she failed to cooperate without good reason or that they have been properly consulted by the Board or that the employment is either suitable or productive or that they have withdrawn from the labour force or accepted other employment or failed to fulfil his or her duty.

These are decisions unlike others made by the Board. They are decisions that place the Board in judgement of the conduct of persons entitled to benefits. The worker or dependent spouse is powerless and without a cheque. The worker must either plead with the Client Service Representative (CSR) who made the decision to reverse the decision, perhaps at the price of agreeing to do whatever the CSR wants him or her to do.

These Board decisions do not require urgent action and can benefit from sober second review before they are finally made and communicated to the worker or dependent spouse.

The Board must have a higher degree of knowledge about the number and circumstances of these decisions and which CSRs are making them. It must treat these decisions as different from others made in the ongoing management of a claim and it must provide the worker with an expeditious avenue of appeal to someone other than the persons who made the original decision.

Recommendation:

The Board collect data on the number, circumstances and identity of persons making or confirming the decisions to reduce or terminate compensation under each paragraph of section 104.

Recommendation:

The Board institute a procedure that requires that each letter communicating a Board decision to reduce or terminate compensation under subsections 104(4)(b) and 104(5) be investigated and co-signed by a manager.

Recommendation:

The Board adopt a policy, as it has on decisions under section 30, that appeals from decisions under subsections 104(4)(b) and 104(5) are to be made directly to the members of the Board and annually report the number and outcome of these appeals.³⁶²

In 2001, the Board adopted a policy respecting notice and termination of benefits under section 104(4)(a).

DEFINITION

For the purpose of this policy, "fit" means fully recovered from the work injury with no permanent physical or cognitive restrictions limiting the ability to resume pre-injury employment.

BACKGROUND

1. Section 104(4)(a) states that the Board may terminate or reduce payment to a worker of any compensation based on the worker's loss of earnings where the worker's loss of earnings is not related to the effects of the injury.
2. While compensation benefits are to be withdrawn when the effects of the injury are no longer the cause of the client's inability to work, consideration will be given to long-term clients who are declared fit, but who no longer have employment to return to when recovered from the injury.

POLICY

1. Where the worker no longer has employment to return to when declared fit for pre-injury employment, Operations staff will provide a minimum of two weeks written notice of termination for every 12 consecutive months a worker is in receipt of biweekly compensation benefits.
2. In addition to notification, Operations staff will refer workers to the Bridging Program for psychological or financial counseling to ease the transition to alternate sources of income.
3. Should a return to work occur prior to the expiry of the notification period, benefits will terminate at the earlier date.³⁶³

³⁶² *Saskatchewan Workers' Compensation Act Committee of Review 2001 Report*, p. 40 and 41.

³⁶³ Saskatchewan Workers' Compensation Board, "Termination of Compensation Benefits - Notice", *Policy Manual*, [P. 3], 08/2001.

Since 1991, the Board's policy on reversing decisions granting entitlement to benefits acknowledges the seriousness of such a decision.³⁶³ The Board has a published procedure adopted in 2006 that requires a Team Leader or the Director of Case Management to authorize individual decisions in some circumstances and face-to-face meetings in others.

BACKGROUND

Reversing a decision that has resulted in a worker receiving benefits under The *Workers' Compensation Act, 1979*, possibly for number of years is a very serious matter. It can result in the termination of those benefits with the attendant negative financial impact on the claimant, and depending on the circumstances, a demand for repayment.

PROCEDURE

1. Decision reversal will occur at the level the original decision was made or higher. Reversing or significantly altering documented plans or file direction without client consent or new information on file must be authorized by the Team Leader or Director of Case Management.
2. Upon internal transfer of a claim, changes in documented plans or file direction should only be done strictly in accordance with Point 3 of PCOL 13/91 – Reversing Decisions.
3. Full written explanation for the reversal is to be provided to the client and documented on the file. In long-standing or complex cases a meeting with the client is required (whenever possible) to ensure total understanding of why the reversal must be made.³⁶⁴

Each annual review of the payment of earnings replacement benefits results in existing claims being terminated for a variety of reasons. The Board is still unable to provide data on the incidence of termination under section 104 or to identify the number of claims terminated in the Figure 71 in the section 5.09 (Pre-Existing Conditions and Chronic Pain) of this report that were terminations under section 104.

In 2005, there was an increase in the number terminated for two reasons: the status code for some claims was not updated until 2005; and the Board began asking in 2005 for verification of current earnings, rather than relying on self-reporting, as it had previously.

³⁶³ Saskatchewan Workers' Compensation Board, "Reversing Decisions", *Policy Manual*, PCOL 13/91.

³⁶⁴ Saskatchewan Workers' Compensation Board, "Reversing Decisions", *Procedure Manual*, PROC 51/2006.

*Fig. 90: Earnings Replacement Benefit Terminations on Annual Review
(1998–2005)*

	1998	1999	2000	2001	2002	2003	2004	2005
Age 65	100	94	91	100	114	107	89	104
Death	13	12	22	16	14	11	12	31
Whereabouts Unknown	2	0	6	0	2	2	1	4
Questionnaire Not Returned	17	8	16	20	19	4	5	13
No Co- operation	7	0	1	1	0	0	0	2
No Longer Entitled	2	2	1	0	3	11	14	51
Total	141	116	137	137	152	135	121	205

The Board reports it was impractical to implement the recommendations of the 2001 Committee of Review and that its quality control processes respond to the problems.¹⁰⁰

This Committee considers it to be no less impractical for the Board to adopt special procedures for suspensions and terminations under subsections 104(4)(b) and 104(5) similar to what the Board adopted in 2006 for termination of benefits under subsection 104(4)(a), for which it does not reply upon its quality control processes.

The Committee reiterates the recommendations of the last Committee of Review.

Recommendations:

The Board collect data on the number, circumstances and identity of persons making or confirming the decisions to reduce or terminate compensation under each paragraph of section 104.

The Board institute a procedure that requires that each letter communicating a Board decision to reduce or terminate compensation under subsections 104(4)(b) and 104(5) be investigated and co-signed by a Team Leader or the Director of Case Management.

The Board adopt a policy that appeals from decisions under subsections 104(4)(b) and 104(5) are to be made directly to the members of the Board and annually report the number and outcome of these appeals.

¹⁰⁰ Workers' Compensation Act Committee of Review 2006, *Status of the Recommendations of the 2001 Committee of Review*, <http://www.labour.gov.sk.ca/cor/resource-/Statusof2001Recommendations.pdf> February 1, 2007.

¹⁰¹ *Northeastern Workers' Compensation Act Committee of Review 2001 Report*, p. 40 and 41.

7. SECURITY OF PAYMENT, FUNDING AND RECOVERIES

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7.01 Persons Dependant on Long-term Payments and Actuarial Assumptions

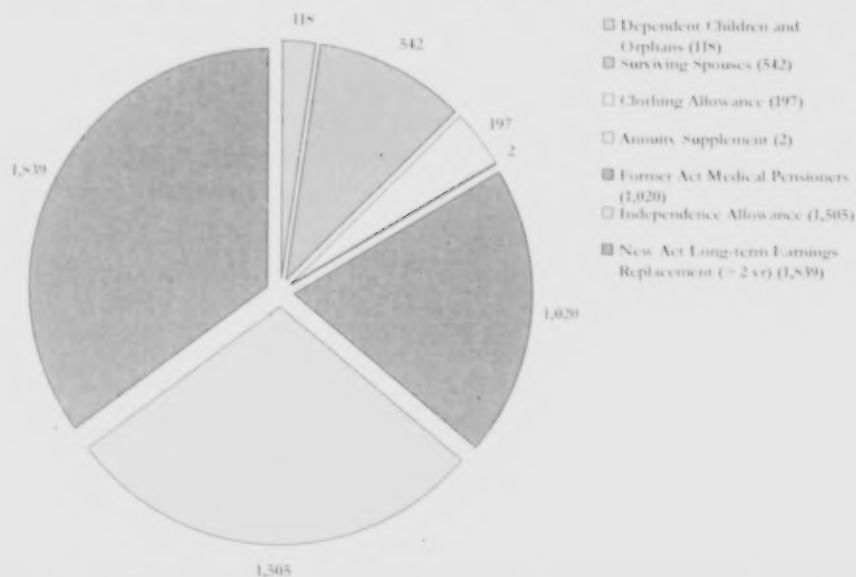
Security of payment of future benefits to injured workers and their families is one of the founding principles of the workers' compensation program and complements the principle of collective employer liability and funding.

Current day employers are expected to pay for all the present and future costs of current day injuries. These costs include medical aid, cash benefits, rehabilitation, aid to attain and maintain independence and the future cost of

administering the benefits by an independent administrative body. The Board is to set the money aside and prudently invest it so all future payments are secured.

As of December 31, 2005, not including persons who have had an injury for which there might be recurring disability, there were 5,223 persons with long term financial dependence on the workers' compensation program. These are persons for whom security of future payment to them is crucial. Many of these persons are among the 5,000 annuity account holders, who are included in the following chart.

Fig. 91: Persons with Long-term Financial Dependence (December 31, 2005)



Note: The number (1,505) of independence allowance recipients is different than the number (1,438) in Figure 67 because of the parameters of different data requests or another unexplained reason. The Committee did not ask the Board to invest resources to reconcile.

During the period of relative economic stability since the last Committee of Review, the Board has not changed the key assumptions on which actuarial valuations of future liabilities are based. These assumptions are critical in calculating the amount of money to be set aside for future payments for current injuries. If the assumptions are unrealistic and not consistent with current experience and accepted industry forecasts, too little or too much money will be set aside and the annual assessments to be paid by employers will be set too high or too low.

The Board has maintained a 3.5% real rate of return – the difference between investment return and the rate of inflation – to discount fully indexed benefits. This assumes an inflation rate of 3.5%. The growth in medical aid cost is

assumed to be 1.5% above Consumer Price Index (CPI) increases. The growth in future wages is assumed to be 1% above CPI increases.^{30b}

At the end of 2005, the Board's external actuaries projected the required cash flow for committed benefit payments and claim management expenses for all existing claims to the year 2054 to be \$1,697,982,000. These expenses include, medical aid costs, short term and long term cash benefit payments, vocational rehabilitation costs, survivor benefits and an allowance for administration for existing and expected future awards from existing employment related injuries and illnesses. Allowing for investment income and inflation, the Board needed to have set aside \$871,332,000 to meet this projected cash flow to 2054.^{30c}

7.02 Revenue from Assessments and Investments

The principal sources of income for the workers' compensation program are assessments paid by employers, and interest and investment income the Board earns on the money in the injury fund and reserves.

Each autumn the Board sets the assessment rates for the rate groups for the following calendar year. The average assessment rate, based on estimates of assessable payroll, investment income and costs, is called the provisional average assessment rate. The actual average assessment rate is calculated after the next calendar year ends based on the actual assessable payroll and assessments collected. Each year from 1996 to 2005 except 2005, the provisional average assessment rate has been \$0.10 or more higher than the actual average assessment rate.

Since 1996, the actual average assessment rate has fluctuated between a low of \$1.57 and a high of \$2.00 per \$100 of assessable payroll. The greatest period of variations has been from 2001 to 2005. The provisional average assessment rate for both 2006 and 2007 is \$1.84. The actual average assessment rate for 2006 is not yet known.

Fig. 92: Provisional and Actual Average Assessments Rates (1996-2005)

	1996	1997	1998	1999	2000	2001	2002	2003	2004*	2005
Provisional Average Rate	2.02	2.09	1.80	1.77	1.73	1.70	1.75	1.91	2.13	2.03
Actual Average Rate	1.87	1.99	1.69	1.66	1.61	1.57	1.65	1.81	2.00	1.97
Difference	0.15	0.10	0.11	0.11	0.12	0.13	0.10	0.10	0.13	0.06

* Not adjusted for the first year of Claims Cost Experience Rated Assessment as in following figure.

^{30b} Hewitt Associations, *Actuarial Valuation at December 31, 2005*, p. 32.

^{30c} Hewitt Associations, *Actuarial Valuation at December 31, 2005*, Appendices G and H.

The amount of income from investment is the one factor that most affects the amount that has to be collected each year from payroll assessments through the provisional average assessment rate. Investment income can fluctuate widely with the equity, bond and other markets.

The component costs of the actual average assessment rate for the years 2001 to 2007 are in the following table.

Fig. 93: Component Cost of Average Assessment Rates (2001-2007)

	2001*	2002*	2003*	2004*	2005*	2006**	2007**
Total Temporary Disability	\$0.45	\$0.44	\$0.49	\$0.551	\$0.485	\$0.464	\$0.469
Other Temporary Disability	\$0.08	\$0.06	\$0.09	\$0.145	\$0.133	\$0.132	\$0.134
Vocational Rehabilitation	\$0.08	\$0.10	\$0.13	\$0.059	\$0.051	\$0.045	\$0.040
Medical Aid	\$0.35	\$0.42	\$0.47	\$0.531	\$0.430	\$0.388	\$0.379
Pension / Earnings Replacement	\$0.16	\$0.14	\$0.18	\$0.216	\$0.248	\$0.228	\$0.228
Independence Allowance	\$0.01	\$0.02	\$0.01	\$0.017	\$0.029	\$0.038	\$0.036
Fatalities	\$0.05	\$0.05	\$0.05	\$0.039	\$0.034	\$0.029	\$0.023
Administration	\$0.47	\$0.48	\$0.47	\$0.448	\$0.458	\$0.411	\$0.399
Safety Associations	\$0.03	\$0.03	\$0.03	\$0.036	\$0.031	\$0.035	\$0.034
Experience Rate / COR Funding	n/a	n/a	n/a	n/a	\$0.060	\$0.060	\$0.020
Subtotal	1.68	1.74	1.92	2.04	1.96	1.83	1.76
2003 Legislation				\$0.04	\$0.02		
Economic Stabilization							
Replenishment						\$0.02	\$0.02
Injury Fund Replenishment				\$0.05	\$0.05	\$0.05	\$0.05
Base Rate				\$2.13	\$2.03	\$1.90	\$1.86
Merit / Surcharge				\$0.08	\$0.08	\$0.08	\$0.08
Experience Rating / COR					\$0.06	\$0.06	\$0.02
Actual / Provisional Rate	1.57	1.65	1.81	\$2.05	\$1.97	\$1.84	\$1.84
			* Actual Average Assessment Rate ** Provisional Average Assessment Rate				

Note: "Other Temporary Disability" includes wage loss payments during partial return to work, training on the job, academic, and technical education, job search, work assessments and vocational rehabilitation programs; inter-provincial compensation refunds, permanent functional impairment awards, and work hardening supernumerary pay.

Effective January 1, 2004, without restating prior years, the Board adopted a new Canadian accounting standard for financial instruments that significantly affects the recorded value of investments.

The change is based on a new Section 3855 ("Financial Instruments – Recognition and Measurement") of the Canadian Institute of Chartered Accountant's Handbook, investments are recorded at fair market value, instead of recording them at cost and gradually adjusting their value toward market value using the moving average market method.

Before 2004, investments were initially recorded at cost and all gains, losses, discounts or premiums were deferred and amortized over time. The length of the amortization period was five years for equities, pooled funds and real estate and the full maturity period for bonds and debentures.

Under the new standard, investments in financial instruments such as bonds, debentures, equities and pooled funds are recorded at market values determined with reference to quoted market prices because they are all considered to be available for sale.

Because these instruments have not been sold, the unrealized gains and losses are reported separately and not included in the operating surplus or deficit for the current period until realization of the gain or loss actually occurs. The new standard does not consider investments in real estate to be financial instruments. Real estate investments are recorded at cost.

This new approach contributed a \$99.4 million increase to the Board's investments, from \$807.6 million in 2003 to \$907.0 million in 2004. Only the amount of the increase that was realized was credited to the Injury Fund balance. The unrealized amount of the increase was credited to Accumulated Market Value Adjustments, a new fund created by the Board in a new funding policy in 2004. The balance in this fund is not considered in determining the program's funded status, premium rates or rebates. Similarly, the unrealized gains in this fund at any particular time should not be considered in determining the affordability or cost impact of any potential increase in benefit levels.

Fig. 94: Assessment and Investment Revenue (\$000) (1996-2005)

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Assessments Collected	154,517	179,286	157,735	154,733	147,938	156,319	165,776	189,584	218,725	247,537
Merit Rebate	11,393	12,436	14,331	13,843	12,276	11,863	12,519	13,172	0	0
Surplus Rebate	0	0	23,000	30,000	36,000	0	0	0	0	0
Debt Amortization Surplus	0	0	5,931	5,194	2,937	0	0	0	0	0
Amortization Government of Canada	0	0	10,689	9,179	16,696	0	0	0	0	0
Surcharge Penalty	1,605	1,828	1,606	2,379	1,992	2,696	0	0	0	0
Safety Associations	5,418	2,855	3,258	4,418	5,444	3,972	4,349	4,570	0	0
	1,359	1,655	1,933	2,233	2,635	2,762	3,185	3,569	3,227	3,449
	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Experience Rating Surcharge	0	0	0	0	0	0	0	0	0	11,040
Replenish Injury Fund	0	0	0	0	0	0	0	0	5,553	5,724
Net Assessment Income	146,788	169,878	118,657	105,499	88,814	147,762	154,421	177,613	221,031	212,002
Investment Income										
Cash & Short-Term Bonds & Other	2,674	2,172	3,619	2,329	2,370	1,867	824	997	878	1,951
Fixed-term	22,900	22,799	23,007	21,487	34,694	21,663	22,989	26,971	19,541	22,916
Equities & Pooled Funds	29,581	43,276	30,531	72,471	67,513	44,191	19,698	23,491	13,203	19,258

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Mortgages	256	326	310	285	338	94	3	0	0	0
Real Estate	362	161	1,138	1,369	2,597	3,070	3,946	3,906	3,189	4,092
Other	94	39	92	126	84	66	64	82	86	0
Expenses	998	1,632	1,911	2,099	1,973	1,983	1,363	1,493	1,670	1,712
Net Investment Income	54,209	67,071	78,816	96,206	105,633	71,968	45,955	47,954	35,727	46,505
Total Income	200,997	236,949	197,473	201,765	194,447	219,730	200,376	259,567	256,738	258,807
Investment Income as % of Total	26.97%	28.31%	39.91%	47.70%	54.32%	32.75%	22.93%	18.76%	13.91%	17.99%

Although investment income as a percentage of all income declined significantly in 2004, this was a reflection of the market.

Security of future payment of benefits requires proper management of the injury fund and all Board assets. Investment income helps maintain assessment rates at acceptable levels and long term investments must protect against the effects of inflation. Allocating a higher percentage of the fund to investment in equities and bonds can generate a higher rate of return over the long term, but greater volatility in the short term. Finding the balance is important and a recent independent study commissioned by the Board found its current investment policy to be "near optimal."¹⁷⁰

The Association of Workers' Compensation Boards of Canada reports the market rate of return of the Canadian boards to compare investment performance. The Saskatchewan Board has had a strong performance by comparison with other Canadian boards.

Fig. 95: Jurisdictional Comparison – Market Rate of Return on Investments (2004)



¹⁷⁰ Saskatchewan Workers' Compensation Board, *Asset Liability and Funding Policy for Saskatchewan Workers' Compensation Board*, Draft November 9, 2006, p. 24.

7.03 Reporting Investments – Section 151(3)

The Board is required by section 151(3) to include in its annual report:

- (a) a statement of all securities in which moneys of the reserve fund have been invested;
- (b) a statement of any securities that have been acquired during the immediately preceding year; and
- (c) a statement of all dispositions of any securities during the immediately preceding year.

This requirement was included in the legislation in 1972 following a recommendation of the 1968 Committee of Review.³¹¹ The reason for the recommendation and inclusion was that “these investments are made with monies collected from employers and the employer is entitled to this type of information.”³¹²

The Board submits this information is not required under generally accepted accounting practices; is not standard practice for other organizations; “provides no value to the reader and in fact has lead to confusion regarding the WCB’s investments”; is significantly outdated by the time the statements are published; and was enacted at a time when the Board did not have an investment policy,³¹³ as it now does.

The Board proposes section 151(3) be amended to state: “The board shall, in each year, include with the report made pursuant to section 175 a statement of investment results including income realized, change in asset values and annual rate of return.”

The Committee agrees that there is a less costly and more timely method available to publish the statements listed in section 151(3) and that an investment results statement, as proposed by the Board, be included in its annual report.

³¹¹ *Report of Committee of Review*, November 1968, p. 20.

³¹² *Report of Committee of Review*, November 1968, p. 20.

³¹³ Saskatchewan Workers’ Compensation Board, “Funding Policy”, *Policy Manual*, POL-01/2005.

Recommendation:

Amend section 151(3) to read as follows:

- “(a) The board shall, each quarter of each year, publish on its website:
- (i) a statement of all securities in which moneys of the reserve fund have been invested;
 - (ii) a statement of any securities that have been acquired during the immediately preceding year; and
 - (iii) a statement of all dispositions of any securities during the immediately preceding year.
- (b) The board shall, in each year, include with the report made pursuant to section 175 a statement of investment results, including income realized, changes in asset values and the annual rate of return.”

7.04 Ability to Meet Future Compensation Payments and Special Reserves

The workers' compensation program maintains money in the injury fund¹⁷¹ from which the Board can make authorized payments.¹⁷² The Board is directed in section 118 that:

- (1) The board shall at all times maintain the fund so that, with the reserves provided for in subsection 135(2) but exclusive of the special reserve mentioned in section 144, it shall be sufficient to meet all the payments to be made out of the fund with respect to:
 - (a) the cost of the administration of the industrial safety program; and
 - (b) compensation as it becomes payable;and so that the employers in any class are not unduly or unfairly burdened in future years with payments to be made in those years in respect of costs and injuries that have previously occurred.
- (2) Insofar as it is practical, the total reserves of the classes of industries provided for by section 121 shall be maintained at a level equal to the total expenditures of the board for the immediately preceding calendar year.

The excluded reserves mentioned in section 144 are for the contingency of a disaster or “other circumstances the liability for which would, in the opinion of the board, unfairly burden the employers in any class”. Subsections 135(2) and (3) state:

- (2) The board shall maintain a reserve fund of amounts that the board considers necessary to pay:

¹⁷¹ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, s. 2 and s. 116.

¹⁷² Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, s. 117.

- (a) the compensation payable in future years in respect of claims in that class of injuries occurring in that year; and
- (b) the cost of the administration of the industrial safety program in future years;

in order to prevent the employers in future years from being unduly or unfairly burdened with payments that are to be made in those years in respect of injuries that have previously occurred and in respect of that cost.

- (3) It is not necessary that the reserve fund mentioned in subsection (2) be uniform as to all classes and, subject to sections 118 and 149, the board may provide for a larger reserve in one or more of the classes than is provided in other classes.

The extent to which the workers' compensation program has assets to pay for all its present and future liabilities is the measure of its funded position. Since the last Committee of Review the funded position fell below 100% in 2002 and 2003, but recovered by 2005.

Fig. 96: Percentage Fully Funded Status (2001-2005)

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
Assets (\$000)					
Cash	11,558	25,916	25,711	25,137	66,468
Receivables	31,042	33,497	33,035	34,392	20,158
Accrued interest	5,156	3,726	3,085	2,666	3,665
Investments	811,694	783,569	807,629	948,453	1,044,664
Property, plant, etc.	19,438	20,302	20,051	19,608	17,287
Total	878,888	867,010	889,511	1,030,256	1,152,242
Liabilities (\$000)					
Payables	35,420	30,716	30,148	23,787	18,587
Benefit liabilities	700,463	778,461	801,777	836,507	871,332
Annuity fund	93,030	101,328	108,953	117,256	127,125
Subtotal	828,913	910,505	940,878	977,550	1,017,044
Surplus/deficit	49,975	(43,495)	(51,367)	52,706	135,198
Total	878,888	867,010	889,511	1,030,256	1,152,242
Unfunded/Surplus Liability	0	(71,958)	(79,830)	24,243	106,735
% Funded	100.00%	92.34%	91.76%	102.41%	110.21%

The Board adopted a new funding policy at the end of 2004.

- 2. The Injury Fund will be maintained as the unappropriated accumulation of operating surpluses or deficits. However, to build and support long-term financial stability, the Injury Fund will contain a targeted balance equal to 15% of total expenditures to support years in which deficits occur.

3. The Disaster Reserve was created and will continue to provide all employers with cost relief in the event of a disaster. Additionally, this reserve will also cover costs that may arise from latent occupational diseases where exposure today may result in the establishment of a future claim. This reserve will be renamed the Disaster and Occupational Disease Reserve and will be set at 12% of total expenditures.
4. The Second Injury and Re-employment Reserve (Second Injury) was established to provide employers with cost relief on claims that were attributed to an earlier injury and to assist in facilitating return to work through retraining. Based on past utilization of this reserve, the Second Injury Reserve will be set at 3% of total expenditures.
5. The Economic Stabilization Reserve replaced the General Reserve to ensure sufficient funds are available to meet required benefit levels and to reduce the magnitude of fluctuations in the average premium rate. This reserve will be applied and replenished equitably across all rate codes and thus cross-subsidization will be kept to a minimum. The Board will determine the maximum amount of fluctuation that can occur in the average premium rate before this reserve is accessed. As a percentage of total expenditures, the Economic Stabilization Reserve will be set at 15%.
6. The Accumulated Market Value Adjustments fund is created to record the accumulated unrealized gains and losses on investments held at the year-end date. The balance of this fund will have no limit and will not be considered in the determination of the funded status of the WCB. Nor will the balance of this fund be considered for purposes of determining premium rates or rebates and ought not be considered as available for benefit enhancements.
7. For the 2001 year and ensuing years, the amounts in the reserves will be frozen at 2000 levels.¹²⁶

As described in its funding policy, the Board maintains money in specific purpose reserves that it establishes and discontinues from time to time. The Board also prudently maintains a liability for the cost of future benefits administration that is not required by legislation. In 2005, this amount exceeded \$42 million.

From 2001 to 2005, the total reserves, including the reserve for future administration expenses, declined. In 2004 and 2005, total reserves were substantially less than they had been in 1998, when investment income was unusually high and assessment rebates were paid to employers. The unrealized gains in the Accumulated Market Value Adjustments reserve in 2004 and 2005 have to be extracted to make historical comparisons.

¹²⁶ Saskatchewan Workers' Compensation Board, "Funding Policy", *Policy Manual*, PCH-01/2005.

Fig. 97: Reserves and Injury Fund Surplus (\$000) (1996-2004)

	1996	1997	1998	1999	2000	2001	2002	2003	2004
General	10,599	0	0	0	0	0	0	0	0
Contingency	0	0	23,880	0	0	0	0	0	0
Economic Stabilization	0	24,100	25,925	27,830	28,463	21,512	0	0	0
Disaster & Occupational Disease	12,463	19,300	20,740	22,264	22,770	22,770	22,770	22,770	22,770
Second Injury & Re-Employment	5,675	4,800	5,185	5,566	5,693	5,693	5,693	5,693	5,693
Future Benefit Administration	0	41,800	44,937	48,239	49,335	34,624	36,665	39,313	41,045
Injury Fund Surplus / Deficit	9,743	24,501	24,097	28,397	30,731	0	(71,958)	(79,830)	(37,991)
Accumulated Market Value Adjustments	0	0	0	0	0	0	0	0	62,234
Total Reserves	38,480	114,501	143,884	132,296	136,992	86,600	(6,830)	(12,054)	93,751

A recent asset liability and funding study commissioned by the Board recommended there be more precise rules when the Disaster & Occupational Disease and Second Injury & Re-Employment reserves are to be used and over what period of time and at what levels they are to be replenished. There are recommendations about their level and structure.

The study recommends adopting a comprehensive funding policy under which the Board strives to maintain a funding range, exclusive of the reserves other than the Economic Stabilization Fund and Injury Fund, of 100% to 120% "in the absence of benefit changes." Amounts outside the target range should be amortized over a period of no more than fifteen years "and perhaps a shorter period for recovery from deficit."³⁷⁷ At the end of 2006, the legislated funding ratio is likely to be well within this range.

The Association of Workers' Compensation Boards of Canada reports the average benefit cost per time loss claim for each jurisdiction. These average costs have a significant impact on the valuation of future benefits costs and the amount that must be available to meet all future compensation payments. In 2004, Saskatchewan had the second lowest average cost per time loss claim.

³⁷⁷ Saskatchewan Workers' Compensation Board, *Asset Liability and Funding Policy for Saskatchewan Workers' Compensation Board*, Draft November 9, 2006, p. 51.

Fig. 98: Jurisdictional Comparison – Average Benefit Cost per Time Loss Claim (2004)



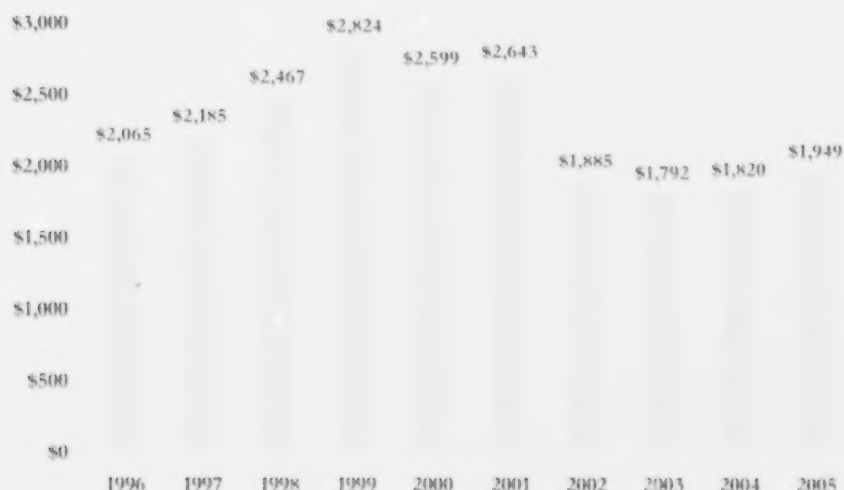
The Association of Workers' Compensation Boards of Canada also reports benefit liabilities as a multiple of benefit payments in a year. This ratio is related to the duration of long term claims. It is an indicator of how many dollars will be paid in future years on average for each dollar paid in a current year and the number of years claims will have to be paid if there are no new claims. Again, in 2004, Saskatchewan was the second lowest.

Fig. 99: Jurisdictional Comparison – Benefit Liabilities as Multiple of Payments (2004)



The administration cost per time loss claim for the Saskatchewan workers' compensation program rose significantly in the 1990s, but has stabilized since 2001 and compares very favourably with other Canadian boards.

Fig. 100: Administration Costs per Time Loss Claim (1996 – 2005)



7.05 When Assessments Due and Payable – Regulation 6

A regulation from the 1980s directs when assessments are due and payable by employers. Regulation 6 of *The Workers' Compensation General Regulations, 1985* states:

Except where otherwise fixed by the board, assessments are due and payable by the employer:

(a) in the case of:

- (i) minimum assessments, additional assessments and penalties;
- (ii) provisional assessments of \$125 or less;
- (iii) the first \$100 of provisional assessments of more than \$125 and less than \$200; and
- (iv) one half of provisional assessments of more than \$200; where the assessment is made prior to July 31 in each year, within 30 days from the date on which the assessment notice is mailed; where the assessment is made prior to July 31 in each year, within 30 days from the date on which the assessment notice is mailed;

(b) in the case of remaining unpaid amounts where the assessment is made prior to July 31 in each year, on September 1 in each year,

(c) in the case of provisional assessments where the assessment is made on or after July 31 in each year, within 30 days from the date on which the assessment notice is mailed.

(d) Repealed.

(e) in the case of arrears and adjustments in assessments of previous years, within 30 days from the date on which the assessment notice is mailed.

The Board submits this regulation is out of date and not followed. The Board allows employers to make monthly prospective payroll submissions and report and pay in other manners. The Board proposes, and the Committee agrees, it be amended as recommended below.

Recommendation:

Amend Regulation 6 to state: "The board shall, on or before February 28 in each year, publish a schedule for the mailing of assessment notices and dates on which assessments are due and payable."

7.06 Collecting Unpaid Assessments through Municipal Tax Collectors

Employers who do not pay their assessments owe a debt to the Board that the Board can collect through the courts.¹³ Since 1979, the Board has an alternate method of collection under section 156 of the Act, which states:

- (1) Where any part of an assessment or special assessment under this Act remains unpaid for thirty days after it becomes payable, the board may, in lieu of or in addition to the proceedings mentioned in section 154, issue a certificate stating:
 - (a) the name and residence of the defaulting employer;
 - (b) the amount remaining unpaid on the assessment; and
 - (c) the establishment in respect of which the amount is payable;and, upon delivery of the certificate to the clerk of the municipality in which the establishment is situated, the clerk shall cause that amount remaining unpaid to be entered on the collector's roll as if it were taxes due by the defaulting employer in respect of the establishment, and the amount shall be collected in the same manner as taxes are levied and collected and, when collected, shall be paid to the board.
- (2) The collector mentioned in subsection (1) is entitled to add five per cent of the amount to be collected to the amount and to retain that percentage for his services.

Fig. 101: Frequency of Board Use of Municipal Tax Collectors (1996-2005)

1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
59	91	18	66	50	35	33	64	67	82

¹³ Government of Saskatchewan, *The Workers' Compensation Act, 1979, c. W-17.1*, s. 154.

The Board proposes that this collection avenue be broadened to include all employer real property other than property at the address where the defaulting employer is located. It proposes amending section 156 as follows:

- (1) Where any part of an assessment or special assessment under this Act remains unpaid for thirty days after it becomes payable, the board may, in lieu of or in addition to the proceedings mentioned in section 154, issue a certificate stating:
 - (a) the name and residence of the defaulting employer; and
 - (b) the amount remaining unpaid on the assessment; ~~and~~
 - (c) ~~the establishment in respect of which the amount is payable;~~and, upon delivery of the certificate to the clerk of the municipality in which ~~the any industry, undertaking or establishment owned by the defaulting employer~~ is situated, the clerk shall cause that amount remaining unpaid to be entered on the collector's roll as if it were taxes due by the defaulting employer in respect of the ~~industry, undertaking or establishment~~, and the amount shall rank *pari passu* with such taxes and shall be collected in the same manner as taxes are levied and collected and, when collected, shall be paid to the board.
- (2) The collector mentioned in subsection (1) is entitled to add five per cent of the amount to be collected to the amount and to retain that percentage for his services.

Note: "pari passu" means equally; with no preference.

The Saskatchewan Association of Rural Municipalities (SARM) and the Saskatchewan Urban Municipalities Association (SUMA) make a contrary proposal. SARM submits the exercise of this authority can cause problems between an employer as municipal ratepayer and the municipality; delay the collection of municipal and education taxes; and is a use of the property tax system for which it was never intended.

At the 2005 SUMA convention, delegates resolved that section 156 be repealed following the Board's increased use of this process to obtain collection priority ahead of property and education taxes. SUMA says: "This situation has forced many municipalities to increase taxation on other properties to help pay for municipal services."

SUMA proposes the repeal of section 156 or its amendment to make the injury fund priority subordinate to municipal and school taxes. Further, it says the Board should not share in proceeds from property disposal until all municipal and education taxes, penalties and surcharges have been satisfied. As an alternative, it proposes the employer's board of directors be held personally liable for unpaid assessments.

The implications of the proposed amendments extend beyond the interests represented among the members of this Committee. The reconciliation of the competing interests is properly a broader public policy issue in which the government will need to consult and consider interests beyond those

participating in the workers' compensation program. Consequently, the Committee does not recommend adoption of either competing proposal.

Recommendation:

Section 156 is not to be amended as proposed by the Board or otherwise.

7.07 Third Party Recoveries - Subrogation

Section 40 of the Act states:

Where a worker or his dependants receive compensation, the board, upon assuming liability for the payment of that compensation, is deemed to be an assignee and is subrogated to all rights of recovery of the person to or in respect of whom or for whose benefit the payment of compensation is assumed to the extent of the compensation payable and, notwithstanding *The Fatal Accidents Act*, the board may:

- (a) bring an action in its own name to recover the amount of the compensation payable; or
- (b) join with the person to or in respect of whom or for whose benefit the compensation is payable to bring an action in the name of that person for recovery of the damages resulting from the injury or death.

Identifying and acting to recover from third parties money paid by the Board to injured workers and dependents holds those third parties not covered by the Act responsible for employment related injuries, illnesses and deaths to workers; relieves employers from the medical and compensation costs; and enables injured workers and dependent's families to recover additional compensation.

Money recovered by the Board is entered in its accounting system to offset compensation, rehabilitation and medical costs the Board has paid and to reduce the claims costs assigned to an employer's account, which can affect the employer's claims cost experience rated assessment.

The amounts recovered do not appear in the Board's financial reports because they are netted out in the Board's statement of operations.

In 2002, the Board's external auditor commented on a failure to identify third party claims with a potential for subrogated recovery. In 2004, the Provincial Auditor reported:

Sometimes, faulty equipment or design of infrastructure may cause injury to workers. When the WCB determines that injuries occur due to the fault of others, the WCB can try to recover the cost of claims (subrogation) from other parties who may be responsible for injuries to workers. The WCB has processes to flag potential claims for subrogation. It has developed guidance for employees to flag such claims for recovery. However, employees did not always know of the

written guidance. As a result, employees did not always flag claims for possible subrogation.¹⁷⁰

Fig. 102: Subrogated Recoveries (1996-2005)



Recommendation:

The Board take the steps necessary to ensure employers, workers and Board employees identify potential claims for subrogation and attentively and vigorously pursue recovery of claims costs from other parties responsible for injuries to workers.

7.08 Penalty Collections

Section 178 of the Act states: "The penalties imposed under the authority of this Act are recoverable upon summary conviction, and when collected shall be paid over to the board and shall form part of the fund."

Earlier in this report, the extent to which the Board has used its existing authority to impose penalties was reviewed. The Board was encouraged to use its existing authority and powers to achieve compliance with statutory obligations before the Committee assesses whether, and in what manner, the Board's current powers and authority are ineffective and considers enlarging the Board's power and authority.¹⁷¹

¹⁷⁰ Saskatchewan Provincial Auditor, Chapter 16 – Workers' Compensation Board, 2004 Report Volume 1, p. 232.

¹⁷¹ Saskatchewan Workers' Compensation Act Committee of Review 2006 Report, Chapter 5 – Section 5.02, *Timely First Payment and Employer Reporting*.

Section 178 deals with the manner in which the Board can recover penalties it imposes under other sections of the Act. There is no sense in imposing penalties if the process for collecting is not accessible or responsive. Civil, rather than criminal law processes should be used.

Recommendation:

Amend the Act to enable the Board to collect a penalty or other amount ordered to be paid under sections 109, 125, 131, 152 and 153, without summary conviction, as a special assessment or debt due to the Board.

7.09 Overpayment Calculations and Recovery

In 2002 the Board adopted a new policy and procedure on overpayment recovery³⁸¹ to give administrative expression to sections 115.1 and 115.2 that were enacted following a recommendation of the 1986 Committee of Review.³⁸² Sections 115.1 and 115.2 state:

115.1 Where compensation payments have been made by the board to a worker beyond the period of his loss of earning capacity or to a worker or dependant in an amount in excess of that to which he is entitled, the amount of the overpayment may be recovered by the board as a debt due the board.

115.2 Without limiting the board's remedies for recovery, any money due the board pursuant to this Act may be set off against any compensation that may be or that may become payable to the person indebted to the board.

In addition to deducting money owed by injured workers or dependants from their cash compensation payments, the Board can file an order in court and enforce it as a judgment of the court under section 169, which states: "Any order of the board for the payment of money under this Act, or a copy of that order certified by the chief executive officer to be a true copy, may be filed with the local registrar of the Court of Queen's Bench and, when filed, may be enforced as a judgment of the court."

In January 2004, the Board obtained judgements against three individuals who were injured in a motor vehicle accident in May 1992 when driving from Manitoba to Saskatchewan. They stated they were not travelling in the course of their employment and received benefits from the public auto insurer in Manitoba. Later, the benefits were terminated because they should have claimed in Saskatchewan where the accident happened. Each of the three made claims to the Board in 1994 and received benefits retroactive to the date of injury. They kept the double payment and did not reimburse the Manitoba insurer.

³⁸¹ Saskatchewan Workers' Compensation Board, "Overpayment Recovery - Compensation", *Policy Manual*, POI-01/2002, and "Overpayment Recovery - Compensation", *Procedure Manual*, PRO-01/2002.

³⁸² *Report of the Workers' Compensation Act Review Committee*, September 1986, p. 68.

After an investigation in 1999, the Board terminated their benefits because the accident had not happened in the course of employment. They were told the Board would not pursue recovery of the benefits paid. Two of them did not appeal. The third unsuccessfully appealed to the Board members in 2001, who ordered him to repay the benefits he had received. No formal Board order was made until October 2003, when all three were ordered to repay a total of \$295,763.34 plus interest.

The Board obtained court judgements in Saskatchewan and applied to register the judgements in Manitoba to enforce and collect against property in Manitoba. The application to register judgments in Manitoba was dismissed in 2005 because the three had been told by the Board it would not pursue recovery of the overpayments and the Board's calculation for the one who appealed was varied, without authority, after his appeal.³⁸³ The Board issued new orders for the same amounts in April 2005 and tried again to register them in Manitoba in 2006. The Board was unsuccessful because of provisions of the applicable Manitoba statute.³⁸⁴

A miscalculated overpayment was a problem the Ombudsman had to investigate and have the Board correct in 2001.³⁸⁵ An overpayment unfairly made retroactive was another matter the Ombudsman investigated.³⁸⁶

These calculation and communication experiences reflect concerns expressed to the Committee that there are inexplicable errors when the Board determines wage rates and calculates compensation that the Board pre-emptorily corrects by declaring and deducting an overpayment.

In some situations a worker returns to work, but the Board is not informed promptly and the worker receives compensation for more days than he or she was absent from work. Those overpayments are collected by the means available to the Board in the situation.

The Board's policy, adopted in 2002, states when the Board will and will not seek recovery of an overpayment.³⁸⁷

4. In all cases, the collection of overpayments that are subject to recovery will be energetically pursued by every cost effective, legal means available, treating all involved with dignity, fairness and professionalism, and except where fraud may be involved, making every reasonable effort to avoid creating undue financial hardship for the debtor.

³⁸³ *Saskatchewan (Workers' Compensation Board)* [2005] M.J. No. 6 (Man. Q.B.) (Q.L.).

³⁸⁴ *Saskatchewan (Workers' Compensation Board)* [2006] M.J. No. 88 (Man. Q.B.) (Q.L.).

³⁸⁵ Ombudsman Saskatchewan, *Provincial Ombudsman 2001 Annual Report*, p. 2.

³⁸⁶ Ombudsman Saskatchewan, *Provincial Ombudsman 2002 Annual Report*, p. 26.

³⁸⁷ Saskatchewan Workers' Compensation Board, "Overpayment Recovery - Compensation", *Policy Manual*, POL 01/2002.

Non-recoverable Overpayments

5. Overpayments resulting from the following circumstances **are not normally subject to recovery**:

- a. A decision is reversed as the result of new information that was not available or which the payee could not have known they were expected to provide at the time of the original decision (e.g., original decision made in good faith).
- b. A decision originally based on best judgment or extension of the benefit of doubt is reversed (per the policy on reversing decisions) because that decision is subsequently seen to have been improper or unreasonable.
- c. The overpayment is discovered more than three years after it occurred or the payee is not notified within three years of the overpayment being discovered, unless fraud may have played a role in how the overpayment occurred.
- d. A computer system or administrative error that has or could have affected compensation paid on more than one claim:
 - i. Examples of system errors: programming error in a payment formula; data entry error in a benefit table, such as Personal Care Allowances.
 - ii. Example of administrative error: incorrect annual CPI rate decision.

The overpayment will be calculated, so the employer receives corresponding credit to its cost experience, and the Board may write off the overpayment.

Recoverable Overpayments

6. Overpayments resulting from the following circumstances **are normally subject to recovery**, and will become an accounts receivable. Such circumstances include, but are not limited to:

- a. Where fraud is suspected and is either being investigated or has been confirmed.
- b. Clerical or calculation errors affecting only one file.
- c. The client or other payee fails to provide, or Board staff fail to obtain relevant, accurate or complete information, even when there is no suspicion of fraud. Examples (not exhaustive):
 - i. A decision such as claim acceptance reversed as the result of new information, other than as in point 2 a. [*error - means 5 a*] above.
 - ii. An advance of benefits in excess of actual entitlement;
 - iii. Wage loss benefits paid beyond the date of return to work;
 - iv. Retroactive suspension of benefits;
 - v. Clerical, documentation or calculation errors on receipts for goods and/or services submitted in connection with physical rehabilitation or return-to-work programming;
 - vi. Incomplete or incorrect wage or exemption information;
 - vii. Actual, verified earnings exceed estimated earnings.

7. Board staff and legal representatives will make every attempt to reach agreement with the debtor as to the methods and rates of repayment, but such agreement is not necessary to proceed with collection efforts.

Suspending Recovery

8. Active efforts to collect overpayments may be suspended if collection is unsuccessful after demands and legal recourses have been exhausted. Despite suspension of recovery, the full amount of the overpayment remains a debt due to the Board.

Fig. 10.3: Overpayment Files and Amounts (\$000) at Yearend (1996 – 2005)

1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
1,057	1,083	1,143	1,183	1,544	1,968	2,066	2,023	1,888	1,517
\$1,426	\$1,640	\$1,989	\$2,025	\$2,252	\$3,044	\$3,286	\$3,087	\$3,097	\$3,227

The yearend number of overpayment files and the amounts represent overpayments to be recovered from workers or dependents receiving compensation and health care providers who were overpaid.

The workers' compensation program relies on impartial inquiry, not adversarial litigation, to determine initial and ongoing entitlement to compensation. In making its inquiries, the Board relies on honesty by workers, employers and health care providers. All cases of fraud on the program should be vigorously pursued by the Board.

The Board proposes it be given new penalty powers by adding a section to the Act that states:

Every person who knowingly provides false statements or withholds information that is relevant to an injury is guilty of an offence and liable to pay a penalty as ordered by the board of not more than \$1,000 and shall also, where the board orders, pay to the board any part of the amount of compensation and medical aid that the board awards for the injury.

The Committee begins with an expectation the Board will competently and accurately determine and pay the correct amount of compensation and review and accurately pay for services from health care providers. That it will not erroneously overpay a worker and then, after the money has been spent, declare and deduct from future payments or otherwise recover an overpayment.

A recurring theme in the submissions from injured workers was that there were both factors beyond the control of the Board and inexplicable errors in the calculation and payment of compensation benefits that led to the declaration and recovery of overpayments. The case of one injured worker illustrates some of these factors and errors.

In 1986, a 45 year old unionized truck driver with eighteen years employment, while changing a tire, injured his back and underwent back surgery in 1987. While receiving cash compensation benefits, he applied for Canada Pension Plan Disability Benefits. They were awarded and in February 1988 he received a retroactive cheque for benefits from March 1987, which he spent. By setting off CPP disability benefits, the Board determined there was a retroactive overpayment in benefits of \$5,000, which the Board decided to collect by deducting \$100 a week from the worker's compensation benefits commencing June 1988. The worker underwent further back surgery and was rated as having a 10% permanent functional impairment in October 1990.

The worker returned to work driving in December 1990 and was re-injured in January 1991. He returned to work as a machine operator in September, but was off work again that same month. He returned to work in February 1992 in a canteen at \$8 per hour and was off work again in May 1992. The pre-injury employer refused to re-employ him in November 1992 and the Board reduced his benefits estimating his earning capacity as \$8 per hour for forty hours a week. In August 1993, his appeal with the assistance of the Office of the Worker's Advocate that he was not fit to work and earn \$8 per hour for forty hours a week was denied by the Appeal Department.

In March 1994, the Board declared an overpayment of \$2,000 because of a CPP disability benefit payment retroactive to November 1992.

The worker underwent back surgery in April 1998. He was granted an independence allowance in June 1998. There was further back surgery in October 2001.

In March 2002, an appeal to the Board members resulted in a reduction in the estimation of his earning capacity to forty hours a week at the minimum wage, not \$8 per hour. He was paid \$8,000 in retroactive benefits in March 2002. In March 2004, his PFI rating was increased to 12.5% and he underwent further back surgery in May 2005.

In November 2005, the Case Manager calculated there was an overpayment due to the Board having overlooked setting off the CPP disability benefit. In January 2006, the Case Manager decided the worker was entitled to receive full wage loss replacement from December 2004 to age 65. The overpayment was appealed and the Appeal Department decided in February 2006 there was to be no recovery until a schedule of payments was agreed between the worker and the Board.

In March 2006, the Case Manager sent the worker a letter with the retroactive payment to December 2004 less \$500 overpayment recovery. In March 2006, the worker authorized recovery of the balance of the overpayment from his annuity account. On April 4, 2006, the responsible Team Leader wrote the worker the following letter:

I first wish to begin with an apology for the delay in responding further to our meeting of March 23, 2006.

It is my understanding that you have a better perspective of how your overpayment was now calculated. It is very complicated and difficult to comprehend and numerous adjustments and letters further aggravated this situation. I must apologize for this, as well, our current payment system tends to issue statements while we are in the middle of processing an adjustment.

I believe we have your entitlement issued with the accordance of our legislation and is now correct. We will however want to hear from you whether you receive differing monthly amounts from your Canada Disability Pension (CDP) entitlement, than we have manually calculated from the initial letter you provided us in 1992. I trust you have retained the figures we have used, however if they have become misplaced, we would be pleased to provide that information again.

Just as a brief and simple recap, I will reflect on the adjustments once again:

- *The \$2,869.88 overpayment was due to the offset of Canada Disability pension not being deducted. This was for the period of May 9th to December 12th, 2005. The adjustment of \$712.14 was due to the decision that you were not estimated capable of earning minimum wage and therefore entitled to full wage loss benefits effective December 7, 2005.*

It was also noted that Canada Disability Pension Benefits offset was not corrected on your long-term Earnings Replacement Benefits, and this resulted in a further adjustment to you in the amount of \$4.41. Therefore with an overpayment of \$2,869.88, we also had collected back:

\$1618.31 on December 21, 2005, from your Earnings Replacement entitlement and a further \$699.43 on January 23, 2006, and \$4.41 on March 16, 2006, bringing your overpayment balance to \$546.73.

It should be noted that the \$4.41 should not have been collected back due to the Appeals Committee decision of February 9, 2006.

Also at our meeting, we discussed the recovery of the existing overpayment and the financial hardship this creates. It was agreed that this would be recovered over the next 3-months from your long-term Earnings Replacement entitlement. You also requested in writing that it actually be recovered from your Annuity entitlement. There had also been a verbal request shortly thereafter to re-create the \$2,869.88 overpayment and have the whole amount recovered from your Annuity entitlement.

Subsequent to this however, your Representative inquired why entitlement benefits did not go back to December 14, 2004, as previous correspondence suggested it would. This prompted an immediate review and although direction to do so was provided, this was not followed through and was subsequently corrected immediately, and further entitlement was issued in the amount \$3,271.77 less the existing overpayment of \$546.73 and provided you with an additional entitlement of \$2,725.04.

You will note, I have combined the adjustment as communicated in the letter dated March 28, for simplification. The Case Manager made this

decision based on the merits and justices of your work injury claim file, thus resolving this complicated issue.

Should you disagree with this decision, all avenues of appeal remain open to you. In closing, I would like to thank you for all your patience related to the issues.³⁸⁸

One injured worker who made a submission to the Committee characterized this type of cycle of events that the Board's Team Leader described as "very complicated and difficult to comprehend" as "being caught in a squirrel cage."

Another spoke of "shock and awe" - shock from the trauma causing the injury and awe at the Board's response.

The Committee has concluded it is not the time to enlarge the Board's authority to pursue persons who withhold information or provide false statements. Instead, the stakeholders must be assured the Board has addressed and resolved the system, training or other factors within its control that can result in payments that are subsequently determined to be overpayments. This includes taking any available initiatives to establish collaborative information sharing with other agencies.

Inadvertent overpayments create undue anxiety, frustration and distrust among injured workers and dependents; an avoidable cost to the injury fund and Board administration; and damage to essential relationships between the Board, injured workers, dependents and health care providers.

Recommendation:

The Board publish a report to stakeholders no later than December 31, 2007 that it has identified and addressed the factors that can result in the declaration of overpayments to injured workers, dependents and health care providers in order to eliminate or minimize the incidents of overpayments.

7.10 Board Borrowing Limit

The Board has the authority to borrow money subject to the approval and limitation in sections 120, which states:

Subject to the approval of the Treasury Board, the board may, upon any security that the lender may require, borrow any sums of money that the board considers necessary for the purposes of this Act, provided that the aggregate of the sums borrowed does not at any time exceed \$1,500,000.

In 1953, the limit was \$200,000.³⁸⁹ It was increased to \$1.5 million in 1998.³⁹⁰

³⁸⁸ Claim #8609/0894 82D.

³⁸⁹ Government of Saskatchewan, *The Workmen's Compensation (Accident Fund) Act*, 1953, c. 256.

³⁹⁰ Government of Saskatchewan, *The Workmen's Compensation Amendment Act*, 1998, c. 46.

Despite the passage of years and the size of the injury fund and reserves the Board maintains, there have arisen times when the Board had to prematurely, and to the fund's detriment, realize an investment when it would have been more advantageous to borrow an amount larger than \$1.5 million for a short term.

The Board describes the \$1.5 million limit as equivalent to "a couple of day's expenditures" that "limits flexibility in ongoing cash flow management, particularly in periods of market volatility." It says this limit is unnecessarily low when it maintains cash reserves that are a multiple of monthly expenses far greater than other Canadian workers' compensation boards. The risks of a higher limit or no limit are low because any Board line of credit will be secured by investments and the actual line of credit will have to be approved by Treasury Board.

In other Canadian jurisdictions, the workers' compensation boards have a larger authorized line of credit than Saskatchewan. The Yukon board uses the Yukon Government line of credit. Saskatchewan has the lowest line of credit as a percentage of annual assessment revenue.

Fig. 104: Jurisdictional Comparison – Credit Limit as % of Assessment Revenue (\$000)

	Credit Line	Assessment Revenue	Credit as %
SASK	\$1,500	\$212,002	0.71 ^a
NWT	\$250	\$34,129	0.73 ^a
Ontario	\$150,000	\$2,256,000	6.65 ^a
NB	\$10,000	\$144,672	6.91 ^a
BC	\$100,000	\$1,239,777	8.07 ^a
Nova Scotia	\$20,000	\$239,823	8.34 ^a
NI-LD	\$20,000	\$158,217	12.64 ^a
PEI	\$3,500	\$25,853	13.54 ^a
Quebec	\$360,000	\$2,275,985	15.82 ^a
Manitoba	\$43,000	\$190,775	22.54 ^a
Alberta	\$250,000	\$978,910	25.54 ^a

The Committee agrees the limit of \$1.5 million in section 120 is too low. The Board has extended its financial risk management to enterprise risk management and has created a risk register linked to its strategic and operational planning.⁹⁰ The Committee has concluded the line of credit should be at an amount that will not require review by the next or subsequent Committee.

Recommendation:

Amend section 120 to substitute "\$25,000,000" for "\$1,500,000."

⁹⁰ Saskatchewan Workers' Compensation Board, *Report to Stakeholders 2005*, p. 27, 28 and 29.

8. GOVERNANCE, IMMUNITY, INFORMATION AND APPEALS

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8.01 Board Composition, Jurisdiction, Governance and Policy

By deliberate choice, the workers' compensation program is not administered as a department of government but by an independent tribunal. The 1928 Royal Commission expressly rejected a state administered insurance scheme.

The danger of such a system is that political bias, favoritism, or expediency may creep in and influence the conduct of those administering the Act rather than sound business principles which an independent tribunal would put into effect. It is best to avoid the possibility of such a danger by having an administration entirely independent of government control.¹⁰⁰

Section 13 of the Act states:

- (1) The Workers' Compensation Board is continued as a body corporate consisting of a maximum of five members, including a full-time chairperson and an even number of full-time members, half of whom represent employers and half of whom represent workers, appointed by the Lieutenant Governor in Council.
- (1.1) The Lieutenant Governor in Council shall appoint:
 - (a) each representative of employers from a list of names submitted by employer associations; and
 - (b) each representative of workers from a list of names submitted by labour organizations.

¹⁰⁰ Percy M. Anderson, K.C., *Report of the Royal Commission: Appointed to Enquire into Workmen's Compensation for Saskatchewan*, (King's Printer 1929), p. 22.

- (2) The head office of the board shall be situated in the City of Regina.
- (3) The sittings of the board shall be held at its head office unless it is expedient to hold sittings elsewhere in Saskatchewan.

The Board has broad and exclusive jurisdiction to decide all matters arising under the Act and its decisions are final and subject to limited review by the courts.³⁹³

The members of the Board appoint a chief executive officer to be the chief administrative officer of the Board and other staff.³⁹⁴ The powers and functions the Board delegates to staff can be reviewed and exercised by the Board.³⁹⁵

The Board has operated with three, not five, members since its inception.³⁹⁶ In recent years, governance and oversight responsibilities have become more complex with more layers of accountability through annual reports to the Legislature, Minister, stakeholders and community.³⁹⁷ The members often attend before committees of the Legislative Assembly.³⁹⁸

Since 1993, Board members have been redefining their role to remove them from daily management, which is delegated to the Chief Executive Officer and staff. This movement was endorsed by the 1996 and 2001 Committees of Review.³⁹⁹ The separation of functions is now recognized in the Act with different positions and responsibilities for the Chairperson and Chief Executive Officer.⁴⁰⁰ In 2002, the Board endorsed a governance model and framework with a committee structure and adopted a governance policy.⁴⁰¹ The current allocation or map of governance responsibilities adopted by the Board appears in Appendix J.

³⁹³ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, s. 22.

³⁹⁴ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, s. 20.

³⁹⁵ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, s. 21.

³⁹⁶ Saskatchewan Workers' Compensation Board, *The Story of Workers' Compensation in Saskatchewan* Appendix III, (1997, SWCB), p. 177 [Note: In 1983 and 1985 there were three members as well as a chair].

³⁹⁷ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, s. 175, ss. 21.1(2), ss. 21.1(3), ss. 21.1(4) and ss. 21.1(5).

³⁹⁸ Standing Committee on Public Accounts & Committee of Finance for the Department of Labour.

³⁹⁹ *Report of the Saskatchewan Workers' Compensation Act Committee of Review, 1996*, p. 8, *Saskatchewan Workers' Compensation Act Committee of Review 2001 Report*, p. 42.

⁴⁰⁰ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1, s. 14 and s. 20.

⁴⁰¹ Saskatchewan Workers' Compensation Board, Board Policy, ADM 13/2000.

The WCB is given express authority by The Workers Compensation Act, 1979 to interpret and implement the intentions of the Legislature within the context of the Act. It follows that corporate policies authorized by the WCB represent the primary operating authority under the Act and provide guidelines for WCB staff. Thus, staffs are specifically directed to use policy when applicable, rather than re-interpret the legislation.

There may be circumstances where a claimant or individual feels that a policy might not to apply due to special circumstances. Consideration may be given to the special circumstances but appropriate authority to deviate from policy must be sought.

WCB Policy constitutes the day-to-day decision making framework and authority for all WCB employee decisions and actions. Only WCB Board members and those to whom they specifically delegate such authority are authorized to interpret the Act and transform such interpretation into action.

WCB Policy Manual, p. ix.

For the correct administration of the Act and regulations and to inform the public how the Board interprets and applies the Act and regulations, the Chairperson and Members of the Board adopt policies that are published and available to the public.

Procedures to implement the policies throughout the organization of the Board and by employees of the Board are authorized by the Chief Executive Officer.

There is always an issue whether internal Board directions to its employees making decisions are consistent with the Act,

regulations and published policies and if all the directing documents, such as manuals used to train new Board employees, are available to the public.

The 2001 Committee of Review recommended the Board publish all documents and directives affecting decision-making. The Board reports it accepted and implemented the recommendations.

The Board's Revenue and Employer Accounts Classification Council³⁰² develops Standard Operating Procedures compiled in an internal Underwriting Procedures Manual. This manual is used for both training and as a reference source for decision-making.

Many of the Standard Operating Procedures deal with purely internal administrative matters. However, some direct Board employee decision-making on questions of compulsory coverage and exclusions from compulsory coverage of the workers' compensation program under the Act and other substantive matters.

³⁰² Saskatchewan Workers' Compensation Board, "Classification Council", *Underwriting Procedure Manual*, Procedure # 9.1, p. 197.

The Underwriting Procedures Manual describes the significance of its Standard Operating Procedures and the process for disclosing them to affected employers.

When an employer asks for information regarding why or how we made a decision, we need to provide them with the information/rationale for the decision we made. This includes Board Policy, Board Procedure and our Standard Operating Procedures.

Board Policies and Procedures are available on our web-site and the general public can access them. In cases where we do not have Board Policy or Board Procedure and we use an internal procedure (our standard operating procedures) to make a decision, we will need to provide the employer with a copy of the standard operating procedure that we used to make the decision.

If you receive this type of question/inquiry where we used a Standard Operating Procedure to make a decision please discuss this request with the Team Leader prior to sending the Standard Operating Procedure to the employer.⁸⁰³

These Standard Operating Procedures are relied upon as operating authority to provide the day-to-day framework for decision making and employee actions. They have been deferred to and relied upon by the Appeals Committee. The Board has made them available when requested by an employer.⁸⁰⁴

In practical application and effect, these Standard Operating Procedures and any other internal documents directing coverage decisions have the same impact as other directives designated as policy or procedure. These documents on which Board employees rely for day-to-day decision making should be readily available to the public. It is especially important that they be immediately available to the public in advance of the consultation and examination of industries, businesses and occupations not currently compulsorily covered by the Act, recommended by this Committee.

Recommendation:

The Board compile and publish on its website all of the current Standard Operating Procedures in its Underwriting Procedures Manual and any other similarly developed documents that are relied on by its employees in the interpretation and application of the Act and regulations.

Each year, the Board reports the policy decisions it has made in its annual stakeholders report. Since 2001, it is through policy that the Board adopted claims cost Experience Rated Assessment⁸⁰⁵; requires at least two weeks notice to

⁸⁰³ Saskatchewan Workers' Compensation Board, "Purpose and Scope of Manual", *Underwriting Procedures Manual*, p. 107.

⁸⁰⁴ The affected employer that had been in a dispute with the Board and made a submission to the Committee on the issue was Saskatoon Midwest Karan Students' Association Inc. In this employer's case the Appeals Committee deferred to the Standard Operating Procedures.

⁸⁰⁵ Saskatchewan Workers' Compensation Board, "Experience Rating Program", *Policy Manual*.

terminate benefits when an injured worker is fit to return to work, but has no job to return to;⁸⁹⁶ established criteria for safety association funding;⁸⁹⁷ established guidelines for disfigurement awards;⁸⁹⁸ adopted a policy on coverage for sports professional, instructors, coaches and players;⁸⁹⁹ and gave direction for the adjudication of stress claims under the *Government Employees Compensation Act*. The policies, procedures and administrative decisions adopted by the Board from 2000 to September 2006 are included in Appendix K.

The Board is to be commended for the consultative manner in which it approached and implemented both claims cost Experience Rated Assessment and the last Committee's recommendation to evaluate the Early Intervention Program.

8.02 Board Relationships and Role of Provincial Government

Since 2001, the Board has established much improved relationships with Legislative Officers, the Office of the Worker's Advocate, other public offices, the broad community of employers and workers and their representatives and health care service providers.

The offices of the Ombudsman, Provincial Auditor and Information and Privacy Commissioner report they have cordial, respectful and accessible communications and dealings with the Board.

The widespread conflict that previously existed with the Board has been replaced with cooperation, consultative and accessibility. The Board's annual meetings and reports have been more revealing of the decision-making and activities within the Board.

The Legislative Assembly and executive government enact the statutory framework, appoint the Board members and hold the program accountable for achieving its goals within the context of the government's broader policy objectives. The provincial government acts through legislation and Board member selection, not direct intervention or involvement in the Board's decision-making.

The government and responsible Minister are to leave administration of the workers' compensation program to the Board as constituted under the Act. The government and Minister are to be responsible for policy, not operations. This is

POI: 05/2006.

⁸⁹⁶ Saskatchewan Workers' Compensation Board, "Termination of Compensation Benefits - Sickness", *Policy Manual*, POI: 08/2001.

⁸⁹⁷ Saskatchewan Workers' Compensation Board, "Safety Association Funding", *Policy Manual*, POI: 06/2002.

⁸⁹⁸ Saskatchewan Workers' Compensation Board, "Disfigurement Awards", *Policy Manual*, POI: 02/2004.

⁸⁹⁹ Saskatchewan Workers' Compensation Board, "Coverage - Sports Professionals, Sports Instructors, Players and Coaches", *Policy Manual*, POI: 02/2005.

a particularly important distinction to be respected in the adjudication of individual claims, assessment rate setting, investment policy and issues involving individual employers when the Board serves as a substitute for the courts and a tribunal for administrative justice mandated to fulfill the objectives and principles of the program.

The government has final decision-making approval on certain Board matters - the appointment of the Board's auditor, purchase and lease of property and borrowing money.¹¹⁰

The executive government can take a direct role in shaping the workers' compensation program by making regulations "it considers necessary to carry out the purposes of the Act and to meet cases not provided for by this Act." Under section 181, the Lieutenant Governor in Council may make regulations "setting out guidelines for the making of decisions by the board." Such a regulation "supersedes any policy directive of the board that conflicts with it."¹¹¹ This is one of very few limitations on the Board's exclusive authority.

The executive government's authority includes making regulations directing the annual report the Board is to make each year to the Minister and the information the Board is to provide at annual meetings.¹¹² It is appropriate that government, not the Board, make these regulations.

The Board proposes that all regulation making authority of Cabinet be repealed and the authority to make regulations be transferred to the Board only subject to approval by Cabinet. The Committee has not discerned that there is a need for this change at this time. Currently, a respectful balance exists among the stakeholder communities, the Board and executive government. There is no mischief that needs to be redressed by a realignment of power and authority.

Recommendation:

Section 181 is not to be amended as proposed by the Board or otherwise.

8.03 Statutory Immunity and Intentional Abuse of Public Office

The power and authority of a case manager, vocational rehabilitation specialists or other Board employee in the injured worker-Board relationship permeates all interactions between individual injured workers and the Board.

The Committee heard allegations of what was characterized as bad faith exercise of the Board's authority to suspend or terminate benefits or otherwise punish an injured worker, and therefore his or her family, because the worker did not, in

¹¹⁰ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1 s. 17.3, s. 17.6 and s. 120.

¹¹¹ Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1 s. 181.

¹¹² Government of Saskatchewan, *The Workers' Compensation Act*, 1979, c. W-17.1 ss. 21.1(3) and (5).

the Board employee's opinion, cooperate to regain health or employment. The decision may have been a response to the worker's words or behaviour in his or her relationship with the Board employee.

Similarly, as in all human relations, the behaviour of an abusive or unrelentingly pestering worker or employer can pressure the Board to provide faster or more service than the co-operative, patient individual. Some persons experienced with dealing with the Board may have more detailed knowledge about the inner workings of the program than new case managers or vocational rehabilitation specialists.

The decisions to punish or reward by action or inaction lie with the Board in the power imbalance between the Board and individual workers and employers. Some argue against any immunity being given to the members of the Board and its employees for acts done or not done in the performance of their duties.

Section 26 of the Act states: "The members shall enjoy the same immunity and privileges as those conferred upon judges of the Court of Queen's Bench for any act done or omitted in the execution of their duties."

Despite legislated immunity, the courts have held that a citizen who suffers damages as a result of an intentional abuse of public power aimed at the citizen has the right to an award of damages in a civil action in tort.

Anyone who has not been living in a sealed glass bubble on an ocean floor for the last 25 years knows that there is a measure of dissatisfaction by some injured workers with The Workers' Compensation Board. That is what this lawsuit is about.

Alberta Queen's Bench, 2001

In Alberta, not Saskatchewan, a worker was assessed as having a temporary total disability. Some time later, a claims adjudicator wanted to have him reassessed by a different doctor. Despite advice the adjudicator received from a Board psychological consultant that having a different doctor assess the worker would

subject him to "excessive mental stress, which may in turn jeopardize his or others' safety", the adjudicator pressed to have the reassessment done by the doctor selected by the adjudicator. The adjudicator also retained a private investigation firm to conduct surveillance on the worker. After receiving the surveillance report, the adjudicator obtained advice from a Board medical advisor with no psychological or psychiatric specialty.

The worker sued the adjudicator and his supervisor, the Board and two doctors. The worker claimed:

The conduct of the Defendants was vindictive, malicious, biased, made without any medical indication or basis, deliberately disregarded the Plaintiff's rights and the express opinions of his treating physician and psychologists that the conduct was medically contraindicated, was a breach of the Defendants' duty of good faith, and constituted an assault upon the Plaintiff as well as a defamation upon his character, all of which resulted in the worsening of his medical and psychological health.

The adjudicator claimed immunity similar to that of a superior court judge.

The Court of Queen's Bench determined the adjudicator's immunity was not absolute under the Alberta statute and the evidence could indicate that the adjudicator had a single-minded purpose to have the doctor he selected assess the worker and find some basis to justify doing so regardless of the worker's rights and health. That evidence would suggest abuse of power. There was evidence to suggest the adjudicator ordered the worker to submit to testing by the doctor he selected upon threat of having his benefits cut off and the result of the assessment damaged the worker's mental health. The Alberta Workers' Compensation Board tried unsuccessfully up to the Supreme Court of Canada to have the suit summarily dismissed.¹¹³

In the light of this Alberta case, the Board proposes section 26 be amended to extend immunity to all employees of the Board for their actions, except if they are done in bad faith, as in the Manitoba Act.¹¹⁴

The Board did not address whether this is intended to give immunity from tortious abuse of public officer or lesser conduct. The elements of the common law tort of abuse of public office are:

1. an intentional illegal act, which is either:
 - (i) an intentional use of statutory authority for an improper purpose; or
 - (ii) actual knowledge that the act (or omission) is beyond statutory authority; or
 - (iii) reckless indifference or wilful blindness to the lack of statutory authority for the act;
2. intent to harm an individual or a class of individuals, which is satisfied by either:
 - (i) an actual intention of harm; or
 - (ii) actual knowledge that harm will result; or
 - (iii) reckless indifference or wilful blindness to the harm that can be foreseen to result.

The Committee has determined it is not an appropriate response to the representations received to either diminish or reinforce the power, autonomy and immunity of Board employees.

Recommendation:

Section 26 is not to be amended as proposed by the Board or otherwise.

¹¹³ *Skidark v. Hufert et al* [2001] A.J. No. 781 (Chambers, Q.B.), appeal allowed [2001] A.J. No. 1598 (Q.B.), (Q.L.) appeal dismissed [2003] A.J. No. 418 (C.A.), (Q.L.) leave denied [2003] S.C. A.A. No. 195 (Q.L.).

¹¹⁴ Government of Manitoba, *Workers' Compensation Act*, c. W200, s. 61.

8.04 Fair Practices Office and Provincial Ombudsman

The Board is the only tribunal the Legislative Assembly has expressly told to act fairly and reasonably – “treat workers and their dependants in a fair and reasonable manner.”¹¹⁸ There is no mechanism by which the Board monitors or reports how well it fulfills this duty.

Like the last and previous Committees, workers and their representatives complained they received disrespectful treatment; experienced an inability to access case managers and other Board decision-makers, even when they received a “bullet in the mail” from the Board; were treated with demeaning directions and assumptions of dishonesty; and were subjected to a propensity by the Board to trump all entitlements with any pre-existing condition or to seize any recorded statement in a file that supports denying or limiting benefits regardless how many, how strong or the source of statements supporting entitlement or continuation of benefits.

This Committee heard reports that an authoritarian, superior attitude and behaviour is being adopted by health care providers in physical rehabilitation facilities whose services are contracted by the Board for the Early Intervention Program and whose business is closely allied with, and dependent on continued references from, the Board.

The 2001 Committee of Review recommended the Ombudsman conduct a fairness audit of the Board’s administration and exercise of authority and discretion under several substantive sections of the Act that directly impact the acceptance, management and ultimate disposition of a claim for benefits. The Committee did this knowing the Board had decided to establish and was taking steps to create a Fair Practices Office.

In May 2000, the Board had reported to the Minister that the Board would be establishing a Fair Practices Office which “will assist our clients with disputes and complaints by steering them through the process to the right place” and “will investigate complaints and tabulate statistics that can point to the need for process and/or policy changes”.

The Board advertised the position of Fair Practices Officer in July 2001. The position was not filled until September 2003, when Murray Knoll, formerly with the Saskatchewan Ombudsman’s Office, was appointed. He began accepting complaints in November 2003.

¹¹⁸ Government of Saskatchewan, *The Wabasca Confessions*, 43, 1979, c.W 17.1, ss. 21.1(1)(a).

The Fair Practice Officer reports directly to the Board through the Chair.¹¹⁶ Its mandate is to investigate complaints regarding:

- delays in adjudication, communication, referrals or payments;
- disagreement with decisions;
- staff conduct;
- verbal and written communication;
- implementation of appeal findings;
- employer accounts;
- administrative payments; and
- misapplication of policy.

The Fair Practices Office cannot assist with issues:

- before the Appeals Committee;
- involving the conduct or a decision of the Board;
- being handled by the Office of the Worker's Advocate; or
- where the complaint was known about for more than one year.

Manitoba, British Columbia and Ontario have Fair Practice Offices/Commissions.

The Manitoba Fair Practices Office was established in 1989 to address issues of fairness and natural justice that are identified by injured workers and employers. The Office's mandate is to investigate complaints and to make recommendations for correction to the Board of Directors when it determines that an action or a decision of the Board was wrong or unreasonable. After 15 years of operation, a Legislative Review Committee in Manitoba found many stakeholders were not aware of the Office.¹¹⁷ The Committee recommended the Fair Practices Advocate be established in the Act, but the Board set its duties and mandate. The recommendation was accepted and the Act was amended effective January 1, 2006.¹¹⁸

In April 1996, the Workers' Compensation Board of British Columbia opened its Complaints Office (formerly the Office of the WCB Ombudsman) to deal with complaints of alleged unfairness on the application of compensation law, policy, practice and procedure. The Chief Complaints Officer is mandated to:

- receive complaints, investigate and make recommendations about alleged acts, omissions and improprieties on the part of Board employees and service providers who have been contracted to provide services under the Act;

¹¹⁶ Saskatchewan Workers' Compensation Board, Fair Practices Office, Fact Sheet, http://www.scbask.com/WCBPortal/ShowProperty/WCBRepository_Forms/Publications_publications/180Sheet.jsp?c_pdt=000001, January 8, 2007.

¹¹⁷ Legislative Review Committee, *Working for Manitoba: Workers Compensation for the Twenty-First Century*, February 2005, p. 56.

¹¹⁸ Government of Manitoba, *The Workers Compensation Amendment Act, 2005*, c. 17.

- investigate complaints, investigate and make recommendations to resolve systemic problems with the workers' compensation system; and
- receive and respond to questions and inquiries about the WCB.

The Complaints Officer adheres to the International Ombudsman Association code of ethics and standards of practice.⁴⁰⁹

The Ontario Fair Practices Commission was established to ensure fairness and accountability between the Board and its clients. Its main role is to address service delivery issues raised by workers, employers and service providers. The first Commissioner commenced her duties in September 2003. The Commission is part of an Ombudsman community and participates actively in the Forum of Canadian Ombudsmen and The Ombudsman Association. The Ombudsman Association has the same code of ethics and standards of practice as the International Ombudsman Association, which the British Columbia Complaints Officer follows.

The last Committee of Review's recommendation for a fairness audit was deferred by the Minister and not implemented. The resources were not available for the provincial Ombudsman to structure and undertake the audit. The change to team-based case management would likely have confounded the results of an audit.

The Fair Practices Office identified two instances in 2004 when Board employees were applying policies and procedures not approved by the Board. Subsequently, the policies were approved.⁴¹⁰ In two instances workers had Board approved vocational retraining plans and relocated to attend the training. Then, their files were transferred from one team to another and the new team reviewed and cancelled the plans. These situations were resolved and the Board adopted a new procedure.⁴¹¹

The primary focus of the Fair Practices Office is to ensure fairness in processes and procedures, not in the interpretation and application of the Act and regulations. Many of the issues dealt with concern miscommunication and errors by Board employees.

⁴⁰⁹ International Ombudsman Association, Standards of Practice, <http://www.ombudsman.org/standards.html> (January 8, 2007).

⁴¹⁰ Saskatchewan Workers' Compensation Board, "Assessable Labour Portion of Contracts", *Policy Manual*, POI, 07/2004; "Coverage – Sports Professionals, Sports Instructors, Players and Coaches", *Policy Manual*, POI, 02/2005.

⁴¹¹ Saskatchewan Workers' Compensation Board, "Reversing Decisions", *Procedure Manual*, PRO 51/2006.

Fig. 105: Fair Practices Office Complaints (2004-2005)

Complaints	2004	2005
New	384	397
Re-opened	40	20
Carried Over	0	43
Total	424	467
Closed Complaints		
Without Referral to WCB	233	205
Referred to WCB for review	110	141
Called WCB to Clarify	38	51
Total	381	397
Complaint Source		
Workers	94.5%	87.2%
Employers	3.9%	9.8%
Other	1.6%	3.0%
Types of Complaints		
Disagree with decision	214	232
Timeliness & process delay	76	67
Information request	58	47
Communications/service issues	31	47
Systemic issues	3	4
Other	2	0
Total	384	397
Referral Outcomes		
New action taken	88	89
Decision changed	14	23
Reviewed - no change	8	29
Carried Over	43	70
Total	110	141
Response Time (Closed Files)		
0 - 7 days	70.6%	62.0%
7 - 30 days	18.9%	19.6%
Over 30 days	10.5%	18.4%

The provincial Ombudsman's role is broader. It is to determine if people have been treated fairly, reasonably and lawfully. The Ombudsman's focus is not that people have been treated in accordance with Board policy, but whether they have been treated fairly.

Probably due to the establishment of the Fair Practices Office, to which the Ombudsman will refer people, the number of workers' compensation related complaints the Ombudsman received has declined in recent years. The exception is 2003 when there were delays due to transition to team-based management.

Fig. 106: Ombudsman WCB Complaints (1990-2005)

	1990	1991	1992	1993	1994	1995	1996	1997
Complaints	125	119	124	150	162	132	158	170
Complaints Closed	85	119	126	166	148	133	168	163
Not Substantiated	n/a	16	21	21	13	23	26	13
Resolved	n/a	67	22	19	22	6	8	9
Unresolved	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Assistance Rendered	n/a	n/a	71	114	84	80	118	135
Alternate Resolution	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Other	n/a	36	12	12	29	24	15	6
	1998	1999	2000	2001	2002	2003	2004	2005
Complaints	162	166	164	159	153	243	158	143
Complaints Closed	166	178	169	147	155	217	175	146
Not Substantiated	23	28	16	10	11	11	36	24
Resolved	8	18	6	8	4	6	3	4
Unresolved	n/a	n/a	7	0	0	0	2	3
Assistance Rendered	121	118	137	109	127	160	108	97
Alternate Resolution	n/a	n/a	n/a	5	1	8	9	7
Other	14	14	n/a	15	12	32	17	11

The "unresolved" cases are the ones the Ombudsman considers to have been valid, substantiated complaints, but a resolution could not be reached with the Board, which would not accept the Ombudsman's recommendation.

The Committee commends the Board for establishing and supporting its Fair Practices Office, but has concluded it is too early in the life and experience of the Office to fully assess and evaluate its contribution to the workers' compensation program. The Committee firmly concludes the Office should continue and be supported by the Board with a clear mandate, evolving authority and security of tenure in appointment.

Recommendation:

The Fair Practices Office formally adopt, adhere to and advertise its adherence to the International Ombudsman Association code of ethics and standards of practice.

8.05 Freedom of Information and Protection of Privacy

The Board must gather information to investigate claims.⁴²² A Board policy on the collection and release of information adopted in 2003, states: "Information collected in the course of determining or investigating a claim or any other

⁴²² Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W-17.1, s. 23 and s. 24.

matter arising from the Act will be limited to that information related to and required to make a decision on that matter."¹²³

The Board's documented procedures about what is and is not to be included in a worker's claim file are contained in procedures authorized by the Chief Executive Officer to implement Board policy that authorizes the Chief Executive Officer "to approve procedures with respect to investigations and file development by Board staff."¹²⁴ The procedures deal with investigations and file development¹²⁵ and recording adverse information.¹²⁶ All information obtained is to be recorded on the Claim file, referred to as the master record.

Sometimes medical records from an attending physician or other health care provider are not vetted before being sent to the Board and will be included on a file with extensive historical, physical, personal and private family information totally unrelated to the worker's injury.

Second, third, fourth hand and anonymous information can be included on a file. Old and irrelevant information can be on a file. Workers are not informed of the information placed on their file or always given an opportunity to comment on or contest the information. There is no established process for a worker to learn about or have erroneous, sensitive or irrelevant information removed from a file or to challenge anonymously supplied information.

The Board's electronic files contain "folder notes" that, like legal opinions, are available only to persons employed within the Board, not to the Office of the Worker's Advocate or Ombudsman. They are available to the Fair Practices Office. Folder notes can be added to a file, amended or deleted at anytime by many authorized persons within the Board with access to a file. Folder notes in the electronic files are intended to be used to tag items or as reminders in a manner similar to post-it notes in a paper file. They are not intended to be a place to store information that should be on a file or to contain directions or communications among team members about relevant information, decisions or other substantive claims management matters.

There are serious and significant issues of privacy and reliability relating to information on Board files and the Committee heard that information can be disclosed to others without vetting despite the provisions of section 171.2, which states:

- (1) Where an employer has requested reconsideration of or applied for a review of a decision made pursuant to this Act with respect to a

¹²³ Saskatchewan Workers' Compensation Board, "Access/Collection/Release of Information", *Policy Manual*, POI 12/2003.

¹²⁴ Saskatchewan Workers' Compensation Board, "Investigations Policy - Repeal", *Policy Manual*, POI 06/99.

¹²⁵ Saskatchewan Workers' Compensation Board, "Investigations, File Development", *Procedure Manual*, PRO 06/99.

¹²⁶ Saskatchewan Workers' Compensation Board, "Adverse Information, Recording", *Procedure Manual*, PRO 37/85 amended by "Issuance of Procedures Manual with Housekeeping Amendments", *Procedure Manual*, PRO 60/2000.

worker's claim for compensation, notwithstanding that the employer is not a party to the reconsideration or review, the board may on written request, in accordance with this section, grant the employer, or a representative of the employer on presentation of the employer's written authorization, access to the information that the board used to make its decision with respect to:

- (a) the facts of the situation in which the injury occurred; or
- (b) the percentage of the cost of compensation which has been assigned by the board to the injury cost record of that employer with respect to the injury the worker suffered out of and in the course of his employment with that employer;

that is obtained on or after the date this section comes into force for the purposes of this Act, but the person receiving the information shall use that information only for the purposes of that reconsideration or review.

- (2) Where a request is made pursuant to subsection (1), the board shall notify the worker or any person whom he has authorized in writing to be his representative of the request and the information that it will grant access to and inform the worker or his representative that he may make any objection to the release of the information within the time specified in the notice.
- (3) On the expiration of the time mentioned in subsection (2), the board shall, after consideration of any objections, determine what information it will grant the employer or his representative access to and so notify the worker or his representative in writing sent by registered mail.
- (4) The worker may, within 21 days of the date that the notice pursuant to subsection (3) is mailed, request the board to reconsider its decision made pursuant to subsection (3).
- (5) The board shall not grant the employer or his representative access to any information until the expiration of the time allowed for a request pursuant to subsection (4) or the determination of the request, whichever is later.
- (6) The board shall inform the worker or his representative of all information it has granted an employer or his representative access to pursuant to this section.
- (7) An employer may request the board to reconsider its decision with respect to the information the board has granted access to within 21 days of the date of that decision.

Sometimes the Board will issue letters to workers, with copies to employers and others, which include personal and private information, without regard to whether the copy recipient should be privy to the information or whether its disclosure to that person denies the worker the safeguards intended by section 171.2.

As a housekeeping matter the Board proposes that, rather than registered mail, it should be able to give notice by any other means of assured delivery under subsection 171.1(3) and also subsection 8(2) that deals with other notices. The Committee agrees.

Recommendation:

Amend subsections 171.2(3) and 8(2) to add the words "or other means of assured delivery" after "registered mail."

The Committee heard submissions that the Board should be required to adopt more rigorous and reviewable methods of identifying relevant information for disclosure. Some Canadian boards have units of employees dedicated to reviewing files and managing requests for file disclosure. Others have checklists and directives to guide Board employees.

This is an era when there is heightened awareness of access to information gathered by all organizations and sensitivity to improper collection, use and disclosure of private personal information.

Since 1992, these issues have been addressed in *The Freedom of Information and Protection of Privacy Act*³²⁷ and since 2003 the custody and control of personal health information has been addressed in *The Health Information Protection Act*.³²⁸ The Board submits its home statute, *The Workers' Compensation Act*, 1979, should expressly state it is exempted from both of these statutes and administrative regimes enacted to protect freedom of access to information and protection of privacy. Currently, there is a difference over the extent to which sections 171 to 171.2 are paramount over *The Freedom of Information and Protection of Privacy Act*. This difference contains the seeds for much dispute and costly litigation, which should be forestalled.

The Board is not exempt from scrutiny by the Provincial Auditor with respect to matters of finances and accounting or from the Ombudsman with respect to questions of fairness.

The Board is subject to the provincial government's Privacy Framework³²⁹ and *The Archives Act*, 2004³³⁰ and has adopted a policy in accordance with that framework.³³¹

The Committee can find no compelling public policy purpose or basis for the Board to continue to be exempt from, or have a special position with respect to,

³²⁷ Government of Saskatchewan, *The Freedom of Information and Protection of Privacy Act*, F-22.01.

³²⁸ Government of Saskatchewan, *The Health Information Protection Act*, H-0.021.

³²⁹ Government of Saskatchewan, *An Organizing Personal Information Privacy Framework for Executive Government*, September 2, 2003.

³³⁰ Government of Saskatchewan, *The Archives Act*, 2004, c. A 26.1.

³³¹ Saskatchewan Workers' Compensation Board, "Storage, Archiving & Destruction of Information", *Policy Manual*, POI-03/2005.

the legislation and administration protecting information or personal health information that applies generally in Saskatchewan.

The Committee recognizes the unique mandate and decision-making role of the Board in the administration of justice, but does not consider the Board's mandate and role to be so unique or special that the law and remedies that apply to other administrative agencies and public bodies should not apply to the Board.

Recommendation:

Amend the Act to specify the Board is subject to the *The Freedom of Information and Protection of Privacy Act*.

The Board collects, compiles and uses extensive personal health information. There is a regime in *The Health Information Protection Act* that addresses the protection of this information while preserving access and sharing of the information by "trustees" for diagnosis, treatment and care, which the Board involves itself in through the Early Intervention Program and other case management endeavours.

The general rules and processes in many parts of *The Health Information Protection Act* apply to the Board, but it is exempt from Parts II (Rights of the Individual), IV (Limits on Collection, Use and Disclosure of Personal Health Information by Trustees) and V (Access of Individuals to Personal Health Information).¹²

The Committee has concluded there is no overriding purpose or reason that the Board should be exempt from these parts.

Recommendation:

Repeal the exemption *The Workers' Compensation Act, 1979* has from Parts II, IV and V of *The Health Information Protection Act*.

Once these recommendations are enacted, the Board will have to review and adopt new processes and procedures for the collection, use and disclosure of personal information that will respond to the submissions the Committee received.

8.06 Review, Reconsideration and Appeal

The Board is a quasi-judicial administrative tribunal. Workers and employers must go to the Board. They cannot go to the courts and the independent judiciary. There is no appeal body separate from the Chairperson and Members of the Board, who administer the workers' compensation program.

¹² Government of Saskatchewan, *The Health Information Protection Act*, S.S. 11:0021, <http://www.aprgov.sk.ca/documents/english/Statutes/Statutes/110021.pdf> (January 8, 2007).

The impartial administrative inquiry process that has evolved in workers' compensation outside the courts is designed to reduce the time, uncertainty, cost and adversarial nature of tort litigation.

Saskatchewan has remained faithful to the original concept of a commission-style board. It has also escaped a reintroduction of litigation that has evolved in other jurisdictions when there was dissatisfaction with the extent of consultation between decision-makers and stakeholders; poor communication between the board and workers; an absence of policy on new types of claims; an expansion of the community's definition of disability; an unwillingness to accept the work relatedness of gradual onset disability; inconsistencies in adjudication; and an absence of explanation by boards for their decisions.

While many of these factors are relied upon in submissions to successive Committees of Review, demands for due process through formal, external appeal avenues have not gained the support of a Committee of Review. There has not been a willingness to substitute appeal processes for quality decision-making on initial adjudication and self-correcting review within the Board. One consequence is that Saskatchewan has avoided the tensions that exist in other jurisdictions between boards and external appeal bodies.

Nevertheless, there are some who believe the cost for individuals has been too great and the best and only way to achieve the right decision in individual cases is to have an independent and impartial appeal body. For them, the expectation in the administration of justice is that aggrieved individuals will be able to appeal to someone free to decide conflicts between individuals and the Board according to procedurally fair rules without restraint, control or influence from outside forces or fear of reprisal. Self-correcting avenues of review by the body that made the original decision do not meet contemporary expectations of justice. A key feature of external review is that decisions, written or published in a way to maintain the privacy of the individuals, will be available to the public to rely on in future cases and to hold the Board accountable.

Others accept mistakes can be and are made in initial decision-making and that there will always be differences over the interpretation of facts and the meaning and application of policy. For them, the benefits of appeal to an external body do not outweigh the costs of giving up on the goal of timely, cost effective, quality decision-making through impartial inquiry. An internal review can be more easily accessible; have simpler processes; provide timely decisions; and remain more faithful to an inquiry, rather than adversarial, model of review. An internal review process with final decision-making by the Chairperson and Board Members requires these persons to understand the full implications of all policies and practices and gives them an ongoing insight into the performance of the organization. What is seen and learned in individual appeals should be a catalyst for continuous organizational improvement.

The Board wants to be self-correcting and maintains that, within the Board, all decision-makers are dedicated to providing unbiased review of prior decisions with clear and uncomplicated explanations.

There is no provision for an "appeal" in the Act. Section 21 says the Board has the power to "review, set aside, amend, stay or otherwise deal" with decisions of any of its staff. Section 22(3) states: "... the board may reconsider any matter that it has dealt with or may rescind, alter or amend any decision or order it has made." Other sections expressly refer to Board reconsideration.⁴³³

Many persons who deal with the Board achieve reconsideration of decisions by Board employees responsible for making the decision. Informal discussion with an initial decision-maker, team leader, manager or other employee will produce a change or explanation of the decision that satisfies the individual worker or employer and no further review is requested.

The Board has a structured process for internal review and reconsideration.⁴³⁴ It advertises it as an "appeal" process and has an Appeals Department that hears appeals before they are heard by Board members.⁴³⁵

The WCB's appeals process gives all clients dissatisfied with a WCB decision on a claim the ability to have that decision reviewed.

When a decision is made on a claim, claims entitlement specialists or case managers inform the client of the outcome of that decision. As well, they advise the client that he/she can have the decision reviewed through the WCB's appeal process.

Clients are also then provided with a fact sheet outlining the appeal process which includes an explanation of how to launch an appeal.

Over the past few years, the WCB has focused attention on making the appeals process more accessible and user friendly, so that clients are assured that their concerns are thoroughly and independently reviewed.

There are two levels of WCB appeals available to clients, with a third level to decide bona-fide medical questions only. The Appeals department provides the first level of appeal for injured workers, or for employers who feel a case deserves reconsideration. Appeals officers determine if claims have been administered within the legislative and policy authority that governs the WCB.

A written decision on the appeal is provided to the client after a complete review has been done on all of the file information relative to the appeal issue.

Clients not satisfied with the outcome of the first level appeal can request to have the issue reviewed in the WCB's second level appeal, at

⁴³³ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, s. W 17.1, s. 60, s. 171.1 and s. 171.2.

⁴³⁴ Saskatchewan Workers' Compensation Board, "Appeals", *Policy Manual*, PRO 03/96, *Procedure Manual*, PRO 03/96.

⁴³⁵ Saskatchewan Workers' Compensation Board, "Appeals: How To Have An Injury Claim Decision Reviewed".

<https://www.wcsask.com/WCBPortal/ShowProperty/WCBRepository/Forms/Publications/publications/1actSheets/appeals/pdf/Content> (January 8, 2007).

the Board level. A bona-fide medical question may be referred to a medical review panel of physicians.¹³⁶

For individuals not satisfied with the decision in the first level of appeal, the WCB provides a second level of appeal. By writing and outlining the grounds for their dispute, clients can have their case heard by the members of the WCB Board.

The decisions made by the Board are based on information in the claim file and on any additional information, which is provided in writing or at a hearing. In this process, the Board is not bound by existing policy in making its decisions; a decision not following corporate policy does not suggest a new policy has been created; Board decisions are not precedent-setting; and WCB staff are bound by the decisions of the Board.

In 2005, the number of Board appeals was up significantly from previous years. In this year, the Board received its second-highest number of appeals ever. This increase was partly due to the Appeals department's recent work on improving the rate at which appeals are heard, on its focus to address wait times, and on its determination to clear up the backlog.

The average wait time for a Board appeal had been approximately 90 days. That number increased somewhat in 2005 as a result of the increased number of appeals, and as a result of transition resulting from the retirement of a Board Member and coinciding appointment of a new Board Member that year.¹³⁷

Fig. 107: Total Number of Appeals (1996-2005)

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Appeals Department	714	693	894	814	873	828	980	1,081	1,077	1,149
Board Members	226	232	268	217	202	248	301	241	284	310
Total	940	925	1,162	1,031	1,075	1,072	1,281	1,322	1,361	1,459

The Board also has an Assessment Appeal Committee.¹³⁸

Fig. 108: Appeals to Assessment Appeal Committee (2000-2005)

	2000	2001	2002	2003	2004	2005
Received	4	15	24	54	51	34
Decided	5	15	24	54	51	34
Accepted	4	4	15	17	14	5
Denied	1	11	9	37	37	29

¹³⁶ Saskatchewan Workers' Compensation Board, *Report to Stakeholders 2005*, p. 30.

¹³⁷ Saskatchewan Workers' Compensation Board, *Report to Stakeholders 2005*, p. 32.

¹³⁸ Saskatchewan Workers' Compensation Board, "Employer Appeals".

<https://www.wcbask.com/WCBPortal/ShowProperty/WCBRepository/FormsPublications/publications/1ac/Sheets/employerAppeals/pdfContent> (January 8, 2007).

Despite the decline in time loss claims, the incidence and nature of appeals has not abated in recent years. Both first time and repeat appeals have increased and a high percentage is accepted.

Fig. 109: Appeals to Appeal Committee/Department (1996-2005)

Appeals Committee / Department	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Received	741	693	894	814	873	828	980	1,081	1,077	1,149
Decided	578	909	869	718	805	939	863	884	1,178	1,336
Accepted	104	191	199	190	169	197	176	197	266	254
% Accepted	17.99	21.01	22.00	26.46	20.99	20.98	20.39	22.29	22.58	19.01
Denied	429	561	570	392	405	461	414	422	639	801
Withdrawn	8	20	23	27	60	38	67	44	42	22
Returned - Entitlement	n/a	n/a	n/a	n/a	n/a	55	74	84	93	107
Returned - Case Management	n/a	n/a	n/a	n/a	n/a	188	132	137	138	152
Yearend	238	22	45	140	208	95	211	408	307	120
Average Days to Decision	n/a	n/a	n/a	n/a	n/a	73	69	149	157	77
% Decided Within 90 Days	5.1	34.9	35.4	21.3	16.2	20.1	20.9	18.8	21.9	26.3
Source of Appeal										
Worker	388	413	520	483	517	523	613	659	717	820
Worker's Advocate	194	116	151	131	146	106	107	120	114	95
Employer	47	32	39	49	88	80	147	116	75	65
Lawyer	49	66	50	50	37	35	27	27	32	35
Union Official	39	41	65	46	47	43	34	48	49	24
Family	6	6	5	13	7	14	15	14	5	10
Doctor	1	7	5	7	2	1	1	0	0	2
Government/MLA	5	3	2	2	2	4	3	4	0	0
Other										
Representative	12	9	55	32	27	20	32	93	85	98
Total	741	693	892	813	873	826	979	1,081	1,077	1,149
Issue										
Initial Acceptance	237	248	308	271	345	280	292	270	289	360
Relationship	110	100	163	156	140	125	165	201	179	218
Recovery/Fitness	209	114	111	88	124	134	166	190	191	139
Expenses	8	4	20	18	10	13	20	31	31	78
Cost Relief	24	10	10	22	35	32	69	85	69	59
Estimated Earning Capacity	39	68	83	85	58	45	50	67	77	54
Suspension	26	16	35	27	20	23	26	36	43	46
Permanent Functional Impairment	11	15	29	34	23	36	33	45	45	41
Wage Base	4	11	21	18	19	24	20	23	24	31
Recovery/Pre-existing	25	63	49	30	42	56	54	56	67	27

Appeals Committee / Department	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Retraining	18	25	20	16	10	12	22	12	23	22
Independence Allowance	n/a	n/a	n/a	n/a	0	9	14	13	9	22
Overpayment	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	2	4
REA Issues	0	1	0	0	0	0	0	0	2	3
Dependants	2	2	0	3	1	3	1	0	0	6
Other	28	16	43	45	46	34	47	52	26	39
Total	741	693	892	813	873	826	979	1,081	1,077	1,149

Fig. 110: Appeals to Board Members (1996-2005)

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Heard By Chair	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	23	43
Received	226	232	268	217	202	248	301	241	284	310
First Time Appeals	n/a	n/a	n/a	148	130	174	209	160	193	228
Repeat Appeals	n/a	n/a	n/a	69	72	74	92	81	87	82
Worker's Advocate Appeals	92	69	71	66	69	96	85	77	101	121
Hearings Held	33	48	55	62	83	83	123	165	118	155
Decided	194	222	265	214	226	249	239	310	286	261
Worker's Advocate Appeals Decided	83	83	65	51	79	94	76	90	95	106
Accepted Percentage	24	42	51	66	67	85	108	124	114	108
Accepted Worker's Advocate Appeals Accepted	12.4	18.9	19.2	30.8	29.6	34.1	45.2	40.0	39.9	41.4
Accepted	15	22	14	20	31	37	47	40	52	54
Denied	158	165	190	127	149	152	122	170	153	139
Yearend	61	94	101	108	110	86	84	146	77	75
Average Days to Decision	136	144	126	183	181	141	162	174	94	117
% Decided Within 60 Days	5	5	9	3	6	13	5	2	35	14
Source of Appeal										
Worker	66	68	99	62	67	78	120	82	99	89
Worker's Advocate	92	69	71	66	69	95	85	77	102	120
Employer	15	16	10	13	13	15	39	28	32	47
Lawyer	22	33	21	27	29	15	22	10	11	13

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Union Official	15	23	21	15	4	15	7	5	5	9
Family	2	5	1	6	2	2	1	6	2	4
Other										
Representative	8	9	29	23	27	26	23	32	33	26
Total	220	223	252	212	202	246	297	240	284	308
Issue										
Initial Acceptance	51	50	56	62	44	50	72	59	61	69
Relationship	90	84	94	71	70	77	87	65	83	82
Fitness	37	49	49	33	40	59	55	48	60	60
Travel Expenses	1	0	1	2	1	0	4	7	7	15
Cost Relief	5	4	9	1	9	6	18	16	21	26
Estimated										
Earning Capacity	19	18	22	14	6	5	13	19	14	14
Suspension	1	0	4	2	6	2	3	0	3	2
Permanent										
Functional										
Impairment	5	3	2	4	5	7	14	8	6	6
Wage Base	4	3	2	3	4	5	4	3	8	8
Retraining	1	1	3	8	7	5	10	3	4	2
Assessment	4	4	2	5	0	6	2	4	6	7
Dependants	1	2	2	1	2	0	0	0	1	1
Other	2	2	6	6	8	24	15	8	10	16
Total	221	220	252	212	202	246	297	240	284	308

A workers' compensation appeals process should apply the statute, regulations and published policy in a fair and equitable manner. It should make decisions on relevant information, including recently acquired information. It should actively make inquiries and not just passively receive information. It should have the authority to vary or revoke an earlier decision and substitute a new decision. And it should be able to monitor and enforce implementation of its decision.

Since 2000, the Board has taken initiatives to reinforce the accessibility and effectiveness of its internal appeal process. Backlogs have been eliminated; time lines have been reduced; more face-to-face hearings have been held; the Chairperson has participated in more appeals; and a quality assurance program for initial decision-making has been introduced.

In 2005, the Board adopted a policy and procedure for appeal of constitutional and Canadian Charter of Rights and Freedom issues directly to Board members.¹⁹⁰ The need to do this reflects some of the unavoidable complexity in modern administrative decision-making.

¹⁹⁰ Saskatchewan Workers' Compensation Board, "Appeals – Charter and Constitutional Issues", *Policy Manual* PCOJ 05/2005 and *Procedure Manual* PRO 05/2005.

Community support for these initiatives was reflected in some of the submissions. Some submissions favour the existing structure. Some support the appointment of an Appeals Commissioner as recommended by the last Committee of Review.

This Committee has concluded the workers' compensation program can benefit from a legislative framework and administrative support for the existing internal review system.

The word appeal does not appear in *The Workers' Compensation Act, 1979*, although it is commonly used by the Board and the community. The existing right of review and the avenues to review are subject to policy and administrative decision-making by the Board. The Board's published policy on appeals has not been revised since 1996.¹⁰⁰ The Appeal Committee referred to in that policy has been supplanted by the Appeals Department.

This Committee of Review has concluded the existing two levels of appeal should be stated in the Act in a manner similar to the right to access a Medical Review Panel.

Recommendation:

Amend the Act to expressly include the existing two levels of appeal.

The Committee has also concluded the final level of appeal before Board Members and the Chairperson should no longer be subject to the constraint of having two healthy members willing and available to expend most of their time on appeals and to coordinate their vacation and other absences so they can jointly attend to appeal hearings.

The Board Members are the first to underscore that there has been an increase in the complexities and demands of governance of the Board and its responsibilities, including stakeholder and public consultation, reporting and accountability; prudent investing of an expanding asset base with a reasonable rate of return; and staying current with policy review and emerging issues.

Both the appeal structure and the overall ongoing stakeholder governance of the Board are at risk of being over-extended with only two representative members, as has been the consistent practice for the first seventy-five years of the Board's existence.

The statute provides for the appointment of two full-time members representative of employers and two full-time members representative of workers.¹⁰¹

¹⁰⁰ Saskatchewan Workers' Compensation Board, "Appeals", *Policy Manual*, POL 03/96 and *Procedure Manual*, PRO 03/96.

¹⁰¹ Government of Saskatchewan, *The Workers' Compensation Act, 1979*, c. W 17.1, s. 13.

The Committee has concluded the need to maintain and improve timely performance with a maximum number of face-to-face hearings in the current Board Member appeal structure and the need to address the demands of modern agency governance require the appointment of the maximum complement of members allowed under the Act.

Recommendation:

The Lieutenant Governor in Council appoint the maximum number of members currently permitted under the Act.

9. RECOMMENDATION SUMMARY AND COSTING

This recommendation summary and accompanying costing is provided in accordance with the government's practice of costing legislative and regulatory amendments. While not required to do so, the Committee initiated the preparation of a cost analysis to inform itself and stakeholders of the impact of the recommendations.

This costing is one sided. It does not assign a value to financial savings in administration or benefit costs or the significance to individuals, families, communities and public policy from recommendations intended to:

- improve prevention of employment related injury and illness;
- improve recovery of health for injured workers;
- improve program delivery or processes;
- improve claims case management;
- improve earlier, productive and sustained return to work;
- reduce friction and litigation costs within the overall program;
- improve communications and relationships with individual workers, employers and stakeholder organizations;
- improve the ability to recover penalties and revenue from third parties;
- improve financial management;
- achieve program compliance with freedom of information and other legislation generally applicable to all public agencies;
- enhance policy transparency, clarity and certainty and access to Board policy;
- improve the credibility and acceptability of decisions made under the program; and
- accelerate or advance priority in the performance of a Board responsibility that must be discharged in any event.

The valuation of the \$64 million immediate increase in future liabilities for the recommendations to increase and index the maximum wage rate was done by the Board's external actuaries using assumptions and valuation methods they used in the Board's recent annual actuarial valuations. This costing projected revenues and component costs for the next six years on the assumption that the

actual average assessment rate would remain at \$1.84, the provisional average assessment rate for both 2006 and 2007.

The costing of these recommendations was reviewed and accepted by the Board before review and acceptance by the Committee.

A similar approach was followed with the costing of an increase in the minimum benefit for former Act medically rated pensions after age 65. The \$612,000 immediate increase in future liabilities is not actuarially significant enough to impact the average assessment rate in this program with annual expenditures in excess of \$240 million and total future fully funded liabilities at the end of 2005 in excess of \$870 million plus annuity accounts and matching investments of \$1billion.

Based on current salary, benefit and administration costs, the Committee, without consultation with the Board, estimates the annual additional cost of appointing two additional representative members to be approximately \$300,000 without any off-setting costs in savings from appeal system or program improvements that will accompany the recommendation. This costing has not been discussed with the Board.

The terms used in this summary have the following meanings.

Nil means either no cost, or a cost that can be absorbed without an increase in administration costs or an increase in reserves for future administration costs.

Immaterial means a cost so small that it is not actuarially material.

Not quantifiable means there is no data or methodology that will identify whether there will be a cost and what that cost will be.

RECOMMENDATION BY THEME

REPORT SECTION

COVERAGE – INDUSTRIES/OCCUPATIONS

1 Excluded Industries – Review and Report

202

The chairperson of the Board, together with a full-time member of the Board representative of employers and a full-time member of the Board representative of workers, personally undertake a comprehensive, province-wide consultation to identify and examine the industries, businesses and occupations not currently compulsorily covered by *The Workers' Compensation Act, 1979* and the Board publish a report of its findings on its website no later than December 31, 2008. The report include the results of the Board's research and findings on the health care cost of employment related injuries in the industries, businesses and occupations not currently compulsorily covered by *The Workers' Compensation Act, 1979* and the health care cost and wage loss insurance coverage in place for workers not currently compulsorily covered by the Act.

Cost: Nil

RECOMMENDATION BY THEME

REPORT SECTION

- 2 Excluded Industries – Industrial Hog Operations 2.02

The Board expressly notify the Lieutenant Governor in Council under section 11(1) that industrial hog operations may properly be brought within the scope of the Act.

Cost: Nil

COVERAGE – EARNINGS

- 3 Maximum Wage Rate – \$59,000 on January 1, 2008 2.03

Amend section 38.1 to set the maximum wage rate applicable on and after January 1, 2008 at \$59,000 per year.

Cost: Included in next recommendation

- 4 Maximum Wage Rate – Index at 165% – provincial average annual wage 2.05

Amend section 38.1 so that commencing on and after January 1, 2009 the maximum wage rate applicable is not less than 165% of the "average annual wage" rounded to the nearest \$100 as of June in 2008 or the subsequent June each year immediately preceding January 1.

Cost: One time \$64 million increase in future liabilities

PREVENTION

- 5 Health Care and Injury Rates 3.04

Due to the high incidents of workplace injury and illness, the Minister of Health take positive action to establish a culture of workplace health and safety throughout the health care sector and ensure each Regional Health Authority is accountable to instill, and invest in, a culture of preventing employment related injury and illness with high standards and continuous improvement in all its workplaces.

Cost: Not quantifiable

- 6 Publication of Employer Experience Rating Information 3.09

Amend *The Workers' Compensation General Regulations, 1985* to require the Board to annually publish on its website, by class and subclass, the name of each currently registered employer and, for each of the previous five years, the number of each employer's full time equivalent employees, the number of each employer's accepted time loss claims and fatalities and, for each year for each employer, the types of injuries, time loss injury rate and, for experience rating, the employer's weighted loss ratio (the ratio of weighted costs to weighted premiums).

Cost: Immaterial

RECOMMENDATION BY THEME

REPORT
SECTION

ANNUITIES/OLD ACT MEDICAL PENSIONS

7. Annuity Payout Limit Increase to \$25,000 and Indexed 5.07
Amend subsection 74(3) to allow the worker to choose to either purchase an annuity or receive a lump sum payment when the accumulated capital and interest is \$25,000 or less in 2007 and to adjust the \$25,000 in increments of \$1,000 annually in subsequent years to reflect the average percentage change in the Consumer Price Index.
Cost: Nil
8. Minimum Compensation after Age 65 for Old Act Pensioners 5.07
Amend section 77.1(1) to substitute "\$630" for "\$530".
Cost: One time \$612,000 increase in future liabilities

PERMANENT FUNCTIONAL IMPAIRMENT AWARDS

9. Functional Impairment Rating Schedule 4.03
Amend section 67 to direct that the rating schedule to be applied is the current edition of the American Medical Association Guidelines.
Cost: Not quantifiable
10. Functional Impairment Ratings for Disfigurement 4.03
The Board rescind its Disfigurement Policy when the current edition of the American Medical Association Guidelines becomes the rating schedule to be applied.
Cost: Included in recommendation above
11. Permanent Functional Impairment Examinations 4.03
Amend section 67 to provide that a permanent functional impairment examination and rating under the American Medical Association guidelines is to be performed by a medical specialist or chiropractor familiar with the injured worker and his or her injury and medical history. In situations where there is no attending medical specialist or chiropractor, the examination and rating is to be done by a medical specialist or chiropractor, familiar with the injured worker's class of injuries for which compensation is claimed, who is selected by the injured worker in consultation with his or her attending physician.
Cost: Not quantifiable

RECOMMENDATION BY THEME
COMMON LAW SPOUSE

**REPORT
SECTION**

- | | | |
|----|---|-----|
| 12 | <u>Dependent Common Law Spouse</u>
Amend section 97 to add the words "or dependent common law spouse" immediately following "dependent spouse" in both subsections (1) and (2). The term "common law spouse" is to have the same meaning as in the existing section 88(3).
Cost: Nil | 205 |
|----|---|-----|

VOCATIONAL REHABILITATION/RETURN TO WORK

- | | | |
|----|---|-----|
| 13 | <u>Report Outcomes of Return to Work Plans</u>
Based on investigated, not just reported, return to work circumstances, including visits to the place of employment after return to work, the Board publicly report the outcomes for injured workers who have individual vocational plans in returning to suitable, productive, safe and sustained employment.
Cost: Nil | 603 |
| 14 | <u>Earnings Estimation of Future Work Capacity s. 104</u>
To ensure a Board estimation of an individual injured worker's future earning capacity is not based upon unreasonable hypothetical assumptions, the Board adopt policies or procedures that confirm any estimated increases in earning capacity for individual injured workers are realistic, reasonable, achievable and supported by information that justifies the estimation and that provide that the Board follows up to confirm each estimate was reasonable.
Cost: Immaterial | 604 |
| 15 | <u>Facilitating Return to Work and Employer's Duty to Accommodate</u>
Amend section 52 to include a concise statement of the employer's responsibility with respect to facilitating the return to work of injured workers and the employer's duty, as enunciated by the Supreme Court of Canada, to accommodate workers with disabilities to the point of undue hardship.
Cost: Nil | 607 |

RECOMMENDATION BY THEME

REPORT SECTION

MEDICAL REVIEW PANEL

- 16 Request for Medical Review Panel 5.12
Amend section 60 to define the phrase "bona fide medical question" for the guidance of physicians and chiropractors and all the community.
Cost: Nil
- 17 Decision Certificate of the Panel 5.12
Amend section 64(1) to require a medical review panel certificate include answers to the medical questions included in the enabling certificate under section 60(2).
Cost: Nil
- 18 Assistance to Prepare Certificate for a Medical Review Panel 5.12
The Board adopt the practice of referring workers to the Office of the Worker's Advocate for advice and assistance before rejecting a certificate from a physician or chiropractor accompanying a request for a medical review panel under section 60.
Cost: Immaterial
- 19 Request for Clarification of Panel Decision 5.12
The Board discontinue the practice of unilateral requests for clarification of medical review panel decisions and amend its policy and procedure to state that any request to a medical review panel for clarification of a decision must be made jointly by the Board and worker.
Cost: Nil

APPEALS AND GOVERNANCE

- 20 Appeal Structure in Statute 8.06
Amend the Act to expressly include the existing two levels of appeal.
Cost: Nil

RECOMMENDATION BY THEME

REPORT SECTION

21 Increase Board Membership

8.06

The Lieutenant Governor in Council appoint the maximum number of members currently permitted under the Act.

Cost: \$300,000 per year

22 Fair Practices Office

8.04

The Fair Practices Office formally adopt, adhere to and advertise its adherence to the International Ombudsman Association code of ethics and standards of practice.

Cost: Nil

BOARD JURISDICTION/AUTHORITY

23 Prevention Programs – Department of Labour

3.00

No change is to be made, at this time, to the legislated prevention roles and jurisdictions of the Board and the Occupational Health and Safety Division of the Department of Labour.

Cost: Nil

24 Employer Liability in Timely Report of Injury

5.02

Amend section 53 to clarify the Board may make an order independent of any summary conviction that an employer pay any part of the amount of compensation and medical aid that the Board awards for a late reported injury and that the amount may be collected by the Board as an additional assessment payable by the employer.

Cost: Nil

25 Collection of Penalties

7.08

Amend the Act to enable the Board to collect a penalty or other amount ordered to be paid under sections 109, 125, 131, 152 and 153, without summary conviction, as a special assessment or debt due to the Board.

Cost: Nil

26 Borrowing Limit

7.10

Amend section 120 to substitute “\$25,000,000” for “\$1,000,000”.

Cost: Nil

RECOMMENDATION BY THEME	REPORT SECTION
27. <u>Collection, Access and Dissemination of Information</u> Amend the Act to specify the Board is subject to the <i>The Freedom of Information and Protection of Privacy Act</i>. Cost: Nil	8.05
28. <u>Collection, Access and Dissemination of Medical Information</u> Repeal the exemption <i>The Workers' Compensation Act, 1979</i> has from Parts II, IV and V of <i>The Health Information Protection Act</i>. Cost: Nil	8.05
BOARD POLICY AND PRACTICE	
29. <u>Development of Individual Rehabilitation Plans</u> The Board adopt a practice of having Case Managers assume responsibility for disability management by developing managed rehabilitation care plans in full collaboration with the injured worker and his or her health care provider and the employer, continuously communicating with the worker, employer, primary health care giver, specialists and any other stakeholder during the implementation and modification of the plan, and follow up to evaluate the success of the plan after the worker returns to work. Cost: Nil	4.05
30. <u>Cautionary File Status</u> The Board adopt a practice of periodic, scheduled review of cautionary security classifications on worker and employer files to determine if the individual continues to be a threat to the health and safety of Board employees at all or at the assigned classification level. Cost: Nil	4.05
31. <u>Psychological/Stress Injury Policies</u> The Board review, revise and update its policies on psychological injury and stress, in particular, and adopts a new policy or policies within one year. Cost: Immaterial	5.03
32. <u>Shiftwork</u> The Board research the effects of shiftwork when developing, interpreting and applying its policies and programs. Cost: Nil	5.03

RECOMMENDATION BY THEME

REPORT SECTION

- 53 Periodic Wage Rate Review and Overpayments 5.05
The Board's periodic wage rate review should not result in a declaration that some of the past cash compensation was too high, the worker was overpaid and a debt is now due to the Board unless there has been some misconduct by the injured worker in reporting gross earnings.
Cost: Nil
- 54 Policy Development and Identification of Affected Workers 5.08
The Board include in its policy making process the adoption of a plan to identify and apply each new policy to all affected and eligible persons when it adopts a new policy.
Cost: Nil
- 55 Expense Cheques Statements 5.08
The Board include with each expense cheque a comprehensible and comprehensive statement explaining the expenses being paid, the amount for each expense, and the calculation of the total being paid.
Cost: Nil
- 56 Pre-Existing Condition Policy and Procedures 5.09
The Board revise its pre-existing condition policy and procedures within one year to ensure the opinion of the injured worker's health care provider is obtained before making a decision to deny or terminate benefits based on the conclusion the worker's pre-existing condition is solely the reason for the disablement or other effects or is solely the reason for the prolonged period of recovery from the disablement or other effects.
Cost: Nil/Immaterial
- 57 Pre-Existing Condition Decisions 5.09
The Board establish a procedure to identify and retrieve Section 50 decision letters that will enable the Board and future Committees of Review to access and analyze decisions under Section 50.
Cost: Nil

RECOMMENDATION BY THEME	REPORT SECTION
38 <u>Chronic Pain Policy</u> The Board develop, adopt and publish a policy on chronic pain and chronic pain syndrome within one year. Cost: Nil	5.09
39 <u>Evaluate Effectiveness of Team-Based Case Management</u> The Board undertake, complete and publish within one year a thorough evaluation of the effectiveness of its team-based case management measured against the goals and objectives it intended to achieve by adopting team-based case management. Cost: Immaterial	5.10
40 <u>Guide for Early Referral to Vocational Rehabilitation</u> The Board develop and publish a guide to assist Case Managers to identify injured workers at risk of not obtaining suitable, meaningful and productive employment and implement processes for early and timely referral of these workers to vocational services. Cost: Nil	6.03
41 <u>Collection of Data on Reductions/Terminations of Benefits</u> The Board collect data on the number, circumstances and identity of persons making or confirming the decisions to reduce or terminate compensation under each paragraph of section 104. Cost: Nil	6.08
42 <u>Notice and Explanation of Benefit Reductions/Terminations</u> The Board institute a procedure that requires that each letter communicating a Board decision to reduce or terminate compensation under subsections 104(4)(b) and 104(5) be investigated and co-signed by a Team Leader or the Director of Case Management. Cost: Nil	6.08

RECOMMENDATION BY THEME

REPORT SECTION

- 43 Appeal of Decisions to Reduce/Terminate Benefits under s. 104 6.08
The Board adopt a policy that appeals from decisions under subsections 104(4)(b) and 104(5) are to be made directly to the members of the Board and annually report the number and outcome of these appeals.
Cost: Nil
- 44 Subrogation Recoveries 7.07
The Board take the steps necessary to ensure employers, workers and Board employees identify potential claims for subrogation and attentively and vigorously pursue recovery of claims costs from other parties responsible for injuries to workers.
Cost: Nil
- 45 Overpayment Recoveries 7.09
The Board publish a report to stakeholders no later than December 31, 2007 that it has identified and addressed the factors that can result in the declaration of overpayments to injured workers, dependents and health care providers in order to eliminate or minimize the incidents of overpayments.
Cost: Nil
- 46 Publication of all Standard Operating Procedures 8.01
The Board compile and publish on its website all of the current Standard Operating Procedures in its Underwriting Procedures Manual and any other similarly developed documents that are relied on by its employees in the interpretation and application of the Act and regulations.
Cost: Nil

OFFICE OF THE WORKER'S ADVOCATE

- 47 Performance Measures and Adequate Funding 5.11
The Department of Labour and Office of the Worker's Advocate develop and publish objectives within the Department's Performance Plan and ensure adequate funding is recovered from the Workers' Compensation Board to achieve and maintain the service levels necessary to meet the objectives.
Cost: Immaterial

RECOMMENDATION BY THEME

REPORT SECTION

HOUSEKEEPING/UPDATING: NO COSTS

- | | | |
|----|--|------|
| 48 | <u>Excluded Industries:</u>
Amend Section 11(2) to substitute the word "regulation" for the word "order." | 2.02 |
| 49 | <u>Definition – "average annual wage"</u>
The Act does not define "average annual wage." It defines "average weekly wage" and indexes the minimum compensation payable to "not less than one-half of the average weekly wage as of June in the year immediately preceding." Using the same process as the Board has used since 1983 to determine the average weekly wage as of January 1 each year, the Board will determine the average annual wage. | 2.03 |
| 50 | <u>Definition of "any former Workers' Compensation Act"</u>
Amend the Act to clarify the meaning of "any former <i>Workers' Compensation Act</i> ", "a former <i>Workers' Compensation Act</i> ", "a former Act" and the meaning and intent of section 183. | 2.06 |
| 51 | <u>Municipal "Workers"</u>
Amend section 5(1) to substitute the word "workers" for "employees" and amend section 5(3) to substitute the word "worker" for "employee" | 2.07 |
| 52 | <u>Maximum Wage Rate Limits Indexing</u>
Amend section 69(1)(a) to add the words "which amount shall not exceed the maximum wage rate then in effect" after the word "Index". | 5.01 |
| 53 | <u>"Employment" Insurance</u>
Amend section 68(3)(b)(iii) to replace the word "unemployment" with "employment." | 5.04 |
| 54 | <u>Clearer Language - "gross weekly earnings"</u>
Amend section 70 to replace the words "average weekly earnings" with "gross weekly earnings." | 5.05 |

RECOMMENDATION BY THEME	REPORT SECTION
55. <u>Clearer Language – "gross weekly earnings"</u> Amend section 68(3)(b) to replace the words "gross earnings" with "gross weekly earnings."	5.05
56. <u>Clearer Language – "gross weekly earnings"</u> Amend section 69(1)(a) to replace the words "worker's average weekly earnings" with "worker's gross weekly earnings."	5.05
57. <u>Clearer Language – "gross weekly earnings"</u> Amend section 69(1)(b) to replace the word "earnings" with "gross weekly earnings."	5.05
58. <u>Clothing Allowance in Act</u> Amend section 80 to include specific reference to personal care allowance, in amounts, and for levels of care, to be determined by the Board.	5.08
59. <u>Reporting Board Investments</u> Amend section 151(3) to read as follows: "(a) The board shall, each quarter of each year, publish on its website: (i) a statement of all securities in which moneys of the reserve fund have been invested; (ii) a statement of any securities that have been acquired during the immediately preceding year; and (iii) a statement of all dispositions of any securities during the immediately preceding year. (b) The board shall, in each year, include with the report made pursuant to section 175 a statement of investment results, including income realized, changes in asset values and the annual rate of return."	7.03
60. <u>Schedule of Assessment Notices</u> Amend Regulation 6 to state: "The board shall, on or before February 28 in each year, publish a schedule for the mailing of assessment notices and dates on which assessments are due and payable."	7.05
61. <u>Notice Other Than by Registered Mail</u> Amend subsections 171.2(3) and 8(2) to add the words "or other means of assured delivery" after "registered mail."	8.05

RECOMMENDATION BY THEME	REPORT SECTION
NO ACTION – STATUS QUO: NO COSTS	
62 <u>Presumption Injury occurred During Performance of Work</u> Section 29 is not to be amended as proposed by the Board or otherwise.	2.04.1
63 <u>Presumption when Found Dead at Work</u> Section 30 is not to be amended as proposed by the Board or otherwise.	2.04.2
64 <u>Common Law Spouse Definition</u> Section 88 is not to be amended as proposed by the Board or otherwise.	2.05
65 <u>Election when Injury Occurs Outside Saskatchewan/Canada</u> Section 36(4) is not to be amended as proposed by the Board or otherwise.	4.01
66 <u>Permanent Functional Impairment Rating</u> Section 67(3) is not to be amended as proposed by the Board or otherwise.	4.03
67 <u>Collection of Assessments via Municipalities</u> Section 156 is not to be amended as proposed by the Board or otherwise.	7.06
68 <u>Power of Board to make Regulations</u> Section 181 is not to be amended as proposed by the Board or otherwise.	8.02
69 <u>Immunity of Board Staff</u> Section 26 is not to be amended as proposed by the Board or otherwise.	8.03

A. 2006 COMMITTEE OF REVIEW MEMBERS

Section 162 of *The Workers' Compensation Act, 1979*, requires that the Lieutenant Governor in Council appoint, at least every four years, a committee of review consisting of five or more members, equally representative of business and organized labour.

Effective April 1, 2006 a seven member Committee of Review was appointed.



James E. Dorsey, Q.C. – Chairperson

Mr. Dorsey is a lawyer specializing in arbitration, mediation, grievance and other employment complaint investigations, and third party labour relations dispute resolutions. Mr. Dorsey chaired Saskatchewan's previous Workers' Compensation Act Committee of Review in 2001. He also served as Chair of the Workers' Compensation Statutory Review Committee in Nova Scotia in 2001-2002,

Minister's Special Representative for the Saskatchewan Workers' Compensation Board review in 2000, and Chair of the Board of Governors of the British Columbia Workers' Compensation Board.



Jacquie Griffiths – Member representing organized labour

Ms. Griffiths is a Staff Representative for the Canadian Union of Public Employees. Ms. Griffiths' areas of responsibility include labour relations in the health care sector. She also advises on occupational health and safety and workers' compensation issues. Ms. Griffiths was a member of the 2001 and 1992 Workers' Compensation Act committees of review. She has chaired the Saskatchewan Federation of Labour's Occupational Health and Safety Committee and Workers' Compensation subcommittee. She is a member of the Canadian Labour Congress' Occupational Health and Safety Committee and Workers' Compensation Committee. Ms. Griffiths is also a member of the provincial government's Occupational Health and Safety Council.



Susan Buckle – Member representing business

Ms. Buckle is the Executive Director of the Saskatchewan Automobile Dealers' Association, a non-profit, membership-based corporation representing new car and light truck franchises in Saskatchewan. In addition to automotive-related industry boards, Ms. Buckle currently sits on the C6 Safety Association Board of Directors as an industry representative, dealing with issues relating to workers' compensation within the C6 sector. She has over 25 years of management experience in the non-profit sector, dealing with membership-based corporations.



Jane Deters – Member representing business

Ms. Deters is an Occupational Health Nurse for IPSCO Saskatchewan Inc. Her duties involve overseeing many aspects of occupational health and safety including IPSCO's Return to Work program, managing the employee assistance program, ensuring compliance with occupational health and safety requirements as well as company policies. In addition, Ms. Deters has been a member of the Workers' Compensation Board Early Intervention Program review and Saskatchewan representative and Acting Secretary to the Executive of the Canadian Occupational Health Nurses.



Ken Dishaw – Member representing business

Mr. Dishaw is the Director of Human Resources for Saskferco Products Inc. He has spent most of his career working in the petrochemical sector in numerous positions. Mr. Dishaw has knowledge and experience in occupational health and safety as well as workers' compensation. Most recently, Mr. Dishaw has been a member of the Building Capacity in Occupational Health and Safety Committee and the Workers' Compensation Board Experience Rating Committee.



Marg Romanow – Member representing organized labour

Ms. Romanow is a Benefits Officer with the Saskatchewan Union of Nurses (SUN). Ms. Romanow has worked for SUN for over twenty years. She assists nurses with long-term disability appeals and other related pension and benefit issues. For more than fifteen years, Ms. Romanow has represented SUN on the Healthcare Pension and Benefits committees. She has obtained the designation of Certified Employee Benefits Specialist through the International Foundation of Employee Benefits. Ms. Romanow has represented labour on the Canadian Pension and Benefits Institute Saskatchewan Regional Council for a number of years. She has also participated in various provincial committees to review Labour Standards, WCB Merit/Surcharge Policies, and Occupational Health and Safety Legislation.



Lori Sali – Member representing organized labour

Ms. Sali is the Business Manager for the Construction and General Workers' Union, Local 180, a position she has held for five years. Ms. Sali is also the Chairperson of the Construction and General Workers' Training Trust Fund, which provides training and education to members to enhance the safety culture in the construction sector. Her duties also include promoting healthy and safe workplaces through the provision of safety officer training to members, and ensuring compliance of occupational health and safety standards on work sites. Ms. Sali also provides assistance to members on workers' compensation matters.

B. FORMER COMMITTEES OF REVIEW

October 7, 1949 (C.C. 1966:49)

Chair

- C.W. Vallentyne

Acting Chair

- B. Heschling, Commissioner,
Workmen's Compensation Board

Members

- A.W. Hoag, Commissioner,
Workmen's Compensation Board
- James Gaffrillo, Saskatoon
- William Davies, Moose Jaw
- W. Johnson, Nipewin
- J. Ackerson, Regina

June 10, 1958 (C.C. 1699:36)

Chair

- C.W. Vallentyne

Members

- Louis Couser
- Harry Hinkley
- Sam McLaughlin
- Clifford Edward Mann
- Thomas Roth
- Joseph L. Stoddart

January 5, 1954 (C.C. 2134)

Chair

- R. Heschling

Members

- A.D. Common, Legislative Committee,
Railroad Brotherhoods
- Andrew Tait, Trades and Labour Congress
- Walter Smithwick, Canadian Congress of
Labour
- Thomas G. Bolger, Employers' Representatives
- J.G. Russell, Employers' Representatives
- J.F. Lind, Employers' Representatives

July 5, 1963 (C.C. 1272:63)

Chair

- R.L. Foster

Acting Chair

- C.J. Cook, Canadian Employers' Representatives
- Elsie Womack, Women's and Welfare

Members

- Alvin Cameron, Organized Employers'
Representatives
- R.A. Harris, Organized Employers'
Representatives
- C.M. McCarty, Trade Union Representatives
- W.D. Smith, Canadian Peace Officers'
Department
- R.N. Ferguson, South Saskatchewan Building
and Construction Trades Council
- Buckle C.W. Wilson, Saskatchewan Co-operative
Furniture Association

January 12, 1968 (O.C. 55/68)

Chair

- Colin W. Murchison

Members

- Dennis E. Toke, Employers' Representative
- Gordon A. Miller, Employers' Representative
- Thomas Park, Organized Employees' Representative
- Ross G. Scaman, Organized Employees' Representative

November 12, 1971 (O.C. 1545/71)

Chair

- Judge A.J.B.L. Muir

Members

- Dr. C.A.R. Dennis, Director, Occupational Health Branch, Department of Public Health
- R.G. Fowler, Executive Secretary, Workmen's Compensation Board
- Edward S. Hlasek, Potash Corp. of America
- Nels Hlubcauk, International Steel Workers of America

December 13, 1977 (O.C. 1823/77)

Chair

- Judge A.J.B.L. Muir

Acting Chair

- J. N. Hiron, Superintendent of Personnel, Potash Corp. of America

Members

- J. Anonim, President, Anonim & Sons Ltd.
- J. Brown, Executive Secretary, Saskatchewan Federation of Labour
- C. Crutchell, Executive Officer, Saskatchewan Federation of Labour

October 14, 1981 (O.C. 1562/81)

Chair

- Judge A.J.B.L. Muir

Members

- Chuck Chynal, Secretary, Saskatchewan Federation of Labour
- Miro Katchuka, Director of Personnel, Saskatchewan Wheat Pool
- Bob McWhillie, International Brotherhood of Electrical Workers
- Wes Norham, Director of Organization, Prairie Region, Canadian Labour Congress
- William Spicer, former Manager, Saskatchewan Division, Canadian Petroleum Association
- Haden Wilky, Saskatchewan Construction Association

December 4, 1985 (O.C. 1097/85)

Chair

- Judge A.B.L. Muir

Members

- Eric Antonini, President, Antonini and Sons Ltd.
- Norm Brown, Plant Manager, Degelman Industries Ltd.
- Virginia Kutzan, Saskatchewan Union of Nurses
- Denis Magnan, Benefits & Compensation Director, Federated Co-operatives Ltd.
- Glenn Maxwell, Personnel Superintendent, Cory Division, Potash Corp. of Saskatchewan
- Gerry Munt, Saskatchewan Federation of Labour
- Wes Norheim, Director of Organization, Prairie Region, Canadian Labour Congress
- Greg Zaba, Construction Unions

April 24, 1996 (O.C. 509/96)

Chair

- Joan Skingle

Vice Chair

- Virginia Kutzan, Worker Representative

Members

- Jack Hardy, Employer Representative
- Susan Hay, Employer Representative
- Richard Johnson, Worker's Organized Employees Representative

September 1, 1991 (O.C. 91/663)

Chair

- Judge A.B.L. Muir

Members

- Jacque Griffiths, Saskatchewan Federation of Labour
- Edward Hlasny, Saskatchewan Mining Association
- Virginia Kutzan, Saskatchewan Union of Nurses
- Lawrence Lashyn, Western Caissons Ltd.
- Arthur Maitland, Saskatchewan Council Canadian Federation of Labour
- Wesley Norheim, Saskatchewan Federation of Labour (CLC)
- Royce Reichert, Employer's Representative
- Mona Selanders, Employers Representative

May 15, 2001 (O.C. 369/2001)

Chair

- James L. Dorsey, Q.C.

Vice Chair

- Jack Mathieson

Members

- Walter Fieberle, Worker's Representative
- Jacque Griffiths, Worker's Representative
- Garth Ivey, Worker's Representative
- Doug Pawson, Employer's Representative
- Elaine Vetter, Employer's Representative

C. SCHEDULE OF PUBLIC MEETINGS

Public hearings were held in six locations throughout the province over a two-week period in September 2006.

North Battleford	September 18, 2006	Don Ross Centre Room 107
Saskatoon	September 19, 2006 & September 20, 2006	Hilton Garden Inn South Ballroom
Prince Albert	September 21, 2006	Prince Albert Inn Maple Leaf Room
Yorkton	September 22, 2006	Best Western Parkland Inn Harvest Room
Swift Current	September 25, 2006	Days Inn Meeting Room A
Regina	September 26, 2006 & September 27, 2006	Best Western Seven Oaks Inn Maple Room

D. LIST OF PRESENTERS/SUBMISSIONS

The Committee of Review would like to take this opportunity to thank the following for their participation in the review process.

PRESENTATIONS:

NORTH BATTLEFORD - SEPTEMBER 18, 2006

Theresa Charpentier	Voice of the Blue Rose Advocacy
Kevin Kennedy (Theresa Charpentier)	
Cecil Polsfut	
Ken Kuhmayer	
David Dishko	
Brian Anderson	

SASKATOON - SEPTEMBER 19 and 20, 2006

Sandra Zaback	
Henry St. Cyer	
Kathy Nelson	
Marilyn Braun-Pollon	Canadian Federation of Independent Business
Martin Weightman	
Dale Payne	
Jerry Wapple	
Karen Downy	
Brian Cochran, Stewart Stone, Ron Powell	International Brotherhood of Electrical Workers IBEW Local 2067 Shift Work Committee
Caroline Bassendowski-Domes	
Kelly Harrington, Connie Jattansingh	Service Employees International Union (SEIU) Local 333,
Ken Winton-Grey, Lori Johb	336, 299

SASKATOON - SEPTEMBER 19 and 20, 2006 (continued)

Paulette Procyshyn

Ken Schwalm, (Alex Taylor Presenter)

Ken Bernges

Margaret Peters

Ronald Lewis

Russell Washkowsky

Alex Taylor

Carol Leader

PRINCE ALBERT - SEPTEMBER 21, 2006 (afternoon)

Virginia Kutzan

Perry Loth

Linda Jarrett

Jimmy MacDonald

Bonnie McRae

Julia & Sam Unruh

YORKTON - SEPTEMBER 22, 2006

John Solomon and Peter Federko

Workers' Compensation Board

Raymond Kuzek

Leonie Hooper

Bill Aitken

SWIFT CURRENT - SEPTEMBER 25, 2006

Kerry Rude

REGINA - SEPTEMBER 26 and 27, 2006

Tom Graham & Barry Doyle	Canadian Union of Public Employees (CUPE) Saskatchewan
Dorothy Shackleton	
John Horstman	
Heather Cugnet	
Lorraine Wilkinson	
Tom Mullin	Saskatchewan Hotel & Hospitality Association
Keith Smith	
Jim Taphorn	
Gordon Scrimbit	
Lise Feser	
Pearl Bloomart & Judy Hanley	
Allan May	
Dr. Montbriand	Physician
Robert Flamant	
Steve Wagner	
Terry Zahorski	Regina & District Labour Council
Gerald Pander	
Gerald Matechuk	
George Rosenau	Advocate
Susan Hay	Regina Catholic Schools
Morgan Zaba	Advocate
Jim Stewart	Chiropractors' Assoc. of Saskatchewan
Mike Carr, Mary Ann McFadyen	Saskatchewan Chamber of Commerce
Sean Ishmael	
Rod Quick	

REGINA - SEPTEMBER 26 and 27, 2006 (continued)

Larry Hubich, Connie Jattansingh,
Don Anderson, Larry Kowalcuk

Saskatchewan Federation of
Labour

Loretta Gurlack

Saskatchewan Union of Nurses

Jim Taphorn

SUBMISSIONS:

Individuals:

Brad Adam
Brian Anderson
Anonymous
Phillip Armbruster
Lorraine Aubichon
Dwight Basken
Caroline Bassendowski
Ken Bernges
Allan J. Burwell
Betty Anne Carriere
Ryan Comin
Heather Cugnet
Roger Dahl
Gerald Demong
David Dishko
Scott Dryden
Colin Eagles
Mark Ehrman
Chris Ehrmantraut
James Erlandson
Harold Favel
Allan Ferguson
Ken Fitzpatrick
Anne Fix
Robert Flamant
Don Frey
Curt Fuhr
Anthony Gervais
Lori Giblett
Sherri Gross
Ernie Hall
Joan Hansen
Judy Havers
Leonic Hooper
John Horstman
Brian Hicks
Dave Hval
Debbie Jacques
Linda Jarrett
Blaine Johnstone
Bruce Junker

Chris Kachur
Scott Kirby
Kenneth Kuhmayer
Victor Kutlesa
Virginia Kutzan
Raymond Kuzek
Andrea Latsay
Carol A. Leader
Alf Lee
Jack Lennon
Michael Lewendon
Ron Lewis
Robert Lichtenwald
Bea Linde
Robert Lindsay
Perry Loth
Robert L. Mar
Brian Mantei
Allan May
Jimmy McDonald
Victor McDonald
Dave Mestgagh
Jeanette Mohr
Michael W. Montbriand
Gisele Monteyne
June Muirhead
Kathy Nelson
Craig New
Lane, J. Ogle
Michael Oleksyn
Gerald Pander
A. Paumill
Dale Payne
Cecil G. Polsfut
Al Potyra
Rod Quick
Bryce Rood
George Rosenau
Melinda Ruchotzke
Winton Schmidt

Individuals (continued):

Dorothy Shackleton
 Norm Simard
 Cheryl Smith
 Sherry Smith
 Stuart Stone
 Henry St. Cyr
 Abiyhail Stuart
 Jim Taphorn
 Alex Taylor

Jeff Trumbley
 Velma M. VanBuckenhout
 Robert Venn
 Steve Wagner
 Jerry Wapple
 Sandy Weyland
 Lorraine Wilkinson
 Morgan Zalta
 Sandra Zaback
 Marion Ziolkoski

Organizations:

ASL Paving Ltd.	Greg Galbraith
Canadian Federation of Independent Business	Marilyn Braun-Pollon
Canadian Restaurant and Foodservices Association	Mark von Schellwitz
Canadian Union of Public Employees	
Carson Safety and Environmental Services	Ron Carson
Central Line Contractors Association of Saskatchewan	Hank Heerspink
Cherick Ventures Ltd.	Cheryl L. Watt
Chiropractic Association of Saskatchewan	C. James Stewart
Clunie Consulting Engineers	
E. Peters Excavating Ltd.	Greg Peters
Hamm Construction Ltd.	Bob Hamm
Heavy Construction Safety Association of Saskatchewan Inc.	Steve Wallace
International Brotherhood of Electrical Workers Local 2067 Shiftwork Committee	Brian Cochran Art Bell S. Stone Doug Balkwill Ron Powell Al Murray Blaine Johnstone
K-Line Maintenance and Construction	Allan Kellett
Office of the Saskatchewan Information and Privacy Commissioner	Gary Dickson, Q.C.

Organizations (continued):

Office of the Worker's Advocate	
Nemanishen Contracting Ltd.	
PB Investments Ltd. o/a Family Pizza	Michael Bzowey
Ramco Paving Ltd.	Bob Wickstrom
Regina Catholic Schools	Sue Hay
Regina Public School Division	
Roadbuilders and Heavy Construction Association of Saskatchewan	M. Neil Cameron
Saskatchewan Arts Alliance	Marnie Gladwell
Saskatchewan Association of Rural Municipalities	David Marin
Saskatchewan Chamber of Commerce	
Saskatchewan Farm Health and Safety Council	
Saskatchewan Federation of Labour	
Saskatchewan Government and General Employees Union	
Saskatchewan Hotel and Hospitality Association	Tom Mullin
Saskatchewan Physiotherapy Association	Patricia A. Tremvane
Saskatchewan Professional Firefighters Association	Gerry Huget
Saskatchewan School Boards Association	William A. Wells
Saskatchewan Union of Nurses	
Saskatchewan Urban Municipalities Association	Don Schlosser
Saskatchewan Workers Compensation Board	John Solomon Walter Eberle Karen Smith
Saskatoon Midwest Karate Students Association	Lyndon Osman
Service Employees International Union Locals 299, 333 and 336	Connie Jattansingh, Local 299 Ken Winton-Grey, Local 333 Lori Johb, Local 333 Kelly Harrington, Local 333 Janice Platzke, Local 336
Shoppers Drug Mart #425	George Fumcaux
Watkins Farms Ltd.	Lori Watkins

E. STATUS OF THE 2001 COMMITTEE OF REVIEW RECOMMENDATIONS

Disclaimer: The information provided in this document reflects what has been reported to the Committee of Review by the Saskatchewan Workers' Compensation Board and Saskatchewan Labour.

Recommendation	Status
2001a: That the Board publish both the expected recovery (injuries) and the best of chronic disability risk factors (injury and disabilities) in their annual report.	The WCB has initiated "Disability Decision Guidelines" on its website. These guidelines can be found at: www.wcb.sk.ca/book.html . The website also includes a fact sheet on "Disability" which includes a list of risk factors for chronic disability.
2001b: That the Board have an independent party conduct an objective evaluation of the performance of its Early Intervention Programs (injury prevention providers) against their self-imposed standards, a comparison to other similar programs for accreditation or public transparency.	On June 3, 2003, the WCB announced an independent evaluation of the Early Intervention Program (EIP) to be conducted by IBM Consulting Services. IBM Consulting submitted its report for the EIP Advisory Committee in March 2004. The report of the EIP Advisory Committee was released. A summary of the IBM report is included in the Workers' Compensation Board's report.
2001c: That the Board formally present a report with advice on the overall health and condition of the Early Intervention Programs to its primary and quality assessment committee.	Saskatchewan Health developed its recommendations on the IBM report, which will progress on the future assessment of the Early Intervention Programs. Workers' Compensation Board's Annual Report.
2001d: The Board compile and publish a summary report of the annual performance of the Early Intervention Programs, including personal and administrative assessment, assessment of the program's overall performance.	The Board has compiled a summary report of the annual performance of the Early Intervention Programs. The report is available on the Board's website.

Recommendation

Status

- 2000-2 The Board receives a commitment, from Atlantic, University and Virginia, approving its contract renewal, a chair appointment, expiring out, within the scope. The Board will not be dealing with the contract and the chair issues as some other body will be doing.
- 2000-3 The Board creates and publishes its own public consensus process and procedure document and will have employees for the first of January under this.
- 2000-4 The Board creates the annual meeting in the fall, the public information and communication process. The Board publishes information on the document, a list of annual meetings to include the Board, University, Virginia, and the annual meeting in the Spring, fall, the University, Virginia, and Virginia, and provides information on the meeting by contract, and information and other appropriate to each and all agencies.
- 2000-5 The University's contract and annual meeting for consensus, Virginia, the Board would have public information and accountability, process.
- 2000-6 The Board will the Office of the Quality Education Council, a future document for meeting. The meeting to discuss contract or contract with a chair, is improving the effectiveness of the public information program. The consensus is to include the public information, according to the best of the document, the best and continued.

A list of the meeting's Chair, Management Process, and published for the Board's information (Atlantic, 2002).

Review, and procedures document, and publication for the WEP website.

The WEP process, including information on the meeting, including the Annual Meeting Meeting. This information has been placed at the meeting for the meeting.

The WEP has created information on the annual meeting, and meeting, in 2000, in 2000.

The meeting was not attended.

The WEP is holding Annual Meeting Meeting, which is the first and second of the proposed meeting.

A list of the meeting, not issued in 2000, including meeting to discuss, continuing, issue.

Recommendation

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| <p>2001c: If the Board and the Worker's Advocate have not established a formal mechanism by the date of the Board's 2002 annual meeting, the Board explain at that meeting why such a mechanism has not been established and, after that meeting, the Minister assign them to establish such a mechanism.</p> | <p>No action required since recommendation 2001a) has been implemented.</p> |
| <p>2001d: The Board report each year at the annual public meeting on its relationship and communication with the Office of the Worker's Advocate.</p> | <p>The WCB and the Office of the Worker's Advocate have provided a joint report at the Annual Meetings since 2002.</p> |
| <p>2002: The Board adopt a deliberate focus and clear plan to stabilize the environment within the Board and relationships between the Board and workers and employers.</p> | <p>The WCB implemented a team-based system structure in 2002 and in 2004, adopted a strategic plan for external relationships.</p> |
| <p>2003a: The Board implement a system to monitor and measure all administration in the administration of the Act, regulations and Board policy.</p> | <p>In 2002, the WCB Board began receiving regular reports on compliance with the Act, regulations and policies, based on team reviews, and Quality Assurance, random checking of decisions made on workers' claims and employees' account.</p> <p>In January 2003, these reports were replaced by a "balanced scorecard" indicator in the management performance reports shared with the Board monthly.</p> |
| <p>2003b: The Board implement a comprehensive training program for Client Service Representatives and other employees involved in primary adjudication.</p> | <p>As part of the restructuring, training in team-based client-centered work methods began in 2002. Computer-based training was added in March 2004.</p> |

Recommendation

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| <p>304 The Minister request the Ombudsman conduct a fairness audit of the Board. The scope of the audit is to be determined by the Ombudsman, after consultation with the Board, but will include specific attention to the Board's administration of the following sections of the Act: s. 90 (pre-existing conditions); s. 93 (claims of workers); s. 60 (request for medical review panel); s. 68 (determining loss of earnings; estimating and determining future earning capacity); (i) 25(1) (issue and merits of the case); (ii) 25(2) (burden of the evidence); (iii) 25(3) (reconsideration); (iv) 104(4) (suspension and termination of benefits); and (v) 104(5) (dependent spouses).</p> | <p>This recommendation was deferred following implementation of the 2001 Committee of Review recommendations.</p> <p>A Fair Practices Officer was appointed in September 2003. The Fair Practices Officer receives and investigates issues and concerns about injured workers and employers before a WCB policy, procedure or practice has not been applied (2003).</p> |
| <p>305a Amend the Act to provide that appeals to the Appeals Commission are to be decided by two or more members of the Appeals Commission, which will continue to report to the Chief Executive Officer.</p> | <p>In February 2004, staff changes in the Appeals Department occurred which resulted in the backlog being reduced and, according to the WCB, approved quality control.</p> |
| <p>305b Amend the Act to include the addition of a full-time Appeals Commissioner as a member of the Board. The Appeals Commissioner is to be appointed for a term of at least four years and must be re-appointed.</p> | <p>The Department of Labour conducted consultations with stakeholder groups found that the creation of an Appeals Commissioner position or the establishment of an external appeal tribunal would not fix the problem with the appeals process.</p> |
| <p>305c Amend the Act to provide that the Appeals Commission, or in the case has become the Commission, plus a Board Member representative of workers and a Board Member representative of employers must participate in each appeal appeal to the Board Members and in each decision on a request for the Board to provide a Medical Review Panel.</p> | <p>The Act was not amended.</p> |
| <p>403 Amend section 90 to change the insurance period to one year.</p> | <p>Section 90 did not undergo in 2003.</p> |

Recommendation	Status
434 The Board diligently communicate and enforce these provisions of the Act, coverage for contractors and their employees.	The Board has developed a brochure targeted to contractors.
435a Amend section 12 to provide for notice to an employer on the application of a worker.	Section 12 was amended in 2002.
435b The Board examine and express an opinion on whether all or some classes of industrial hog operations should be brought within the scope of the Act. If the Board is of the opinion that some or all industrial hog operations should be brought within the scope of the Act, notify the Lieutenant Governor in Council under subsection 11(1) of the Act.	The WCB examined the issue and provided a report to the Minister.
436 The Government review whether the monetary bar to litigation against physicians and surgeons who allegedly violate the injuries of injured workers through negligent action or inaction should be removed.	A review was conducted and a legislative amendment is currently proposed at this time.
437 Amend subsection 82(1) of the Act to increase the amount to \$10,000, which is to be added annually to an inheritance.	Section 82 was amended in 2002.
438 Amend section 30 to add the words "unless the contrary is shown."	Section 30 was amended in 2002.
439a Amend section 47 to require the Board to use the current edition of the AMA Guides.	Recommendation was not immediately implemented.
	The WCB's Chief Medical Officer will review the AMA Guides.

Recommendation

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| 5.03(b) Amend subsection 67(1) to provide for a minimum of \$2,200 and a maximum of \$45,200, (permanent functional impairment award) | Section 67 was amended in 2002. |
| 5.04 Amend section 67.1 to substitute 5% in place of 10%. | Section 67.1 was amended in 2002. |
| 5.05 Amend subsection 74(3) to allow the worker to choose to receive either an annuity or a lump sum payment when the accumulated capital and interest is \$20,000 or less. | Section 74 was amended in 2002. |
| 5.06(a) Amend section 38.1 to establish a maximum wage rate, the calculation of which would be based on an annual review of the salaries of all time loss claims for the period July 1 to June 30 of the preceding year. The maximum wage rate is to be set so that 94% of time loss claimants would be eligible for compensation equivalent to their salary. The maximum wage rate is to be rounded up to the nearest \$100. The maximum wage rate is not to be reduced. Using this method, the maximum insurable and assessable wage rate for 2002 would be \$51,900. | <p>A modification of the recommendation was legislated in 2002.</p> <p>The maximum wage rate was increased in three stages:</p> <ul style="list-style-type: none"> • \$51,900 on January 1, 2003 • \$53,000 on January 1, 2004 • \$55,000 on January 1, 2005 <p>If the recommendation had been implemented, the maximum wage rates would be:</p> <ul style="list-style-type: none"> • 52,294 – 2003 • 55,570 – 2004 • 57,052 – 2005 |
| 5.06(b) Amend the Act to expressly state the maximum wage rate is the upper limit for gross earnings for purposes of calculating benefits. | Section 70 was amended to clarify that "gross" earnings are used in the calculation of benefits and thus the maximum wage rate is a gross amount. |
| 5.07(a) Amend the Act to require the Board to publish the annual schedule setting out a table of earnings for the purposes of calculating gross earnings minus probable deductions. | <p>The Act was not amended.</p> <p>The WCB has included the calculation of net compensation payable in the procedures manual (PRO 50/2003).</p> |

Recommendation	Status
5.07(b) Amend the Act to require the Board to issue with each compensation cheque to a worker an explanation of the calculation of the worker's gross earnings and the net amount of the compensation.	The Act was not amended. The WCB improved cheque stubs in the fourth quarter of 2003.
5.08(a) The Board adopt and publish a policy on calculating the average weekly earnings of casual, seasonal and part-time workers before the 2002 annual public meeting.	Board policy POI, 10/2003 effective October 2003) and procedure PRO 10/2003 and PRO 58/2005 speak to determining average weekly earnings.
5.08(b) Amend subsection 70(4) to substitute "or" for "and".	Section 70 was amended in 2002.
5.09 Amend subsection 113(a) to use language similar to the language in subsection 106(1)(c) so that subsection 113(a) reads "the replacement or repair of any artificial member or apparatus, including broken dentures, eye glasses, artificial eyes or artificial limbs when breakage is caused by an accident in the course of the worker's employment."	Section 113 was amended in 2002.
5.10 Amend the Act so that the definition of "average weekly wage" applies wherever it is used throughout the Act.	Section 69.1 was repealed and a new subsection 2(a) was included in the Act in 2002. The new subsection defines "average weekly earnings" for the entire Act.
6.04(a) The Board collect data on the number, circumstances and identity of persons making or confirming the decisions to reduce or terminate compensation under each paragraph of section 104.	In 2004, the WCB's Board started receiving monthly quality control reports on decisions. Since January 2005, this has been part of a "balanced scorecard" indicator in the management performance reports shared with the Board monthly.

Recommendation	Status
6.04(b) The Board institute a procedure that requires that each letter communicating a Board decision to reduce or terminate compensation under subsections 104(4)(b) and 104(5) be investigated and co-signed by a manager.	The Board undertakes quality control sampling.
6.04(c) The Board adopt a policy, as it has on decisions under section 30, that appeals from decisions under subsections 104(4)(b) and 104(5) are to be made directly to the members of the Board and annually report the number and outcome of these appeals.	This recommendation has not been implemented. The WCB has concerns with the practicality of the proposed process.
7.01 Amend the Act to replace the title "Chief Executive Officer" for "executive director" in sections 2, 20, 169 and 173.	These sections of the Act were amended in 2002.
7.02 Amend subsection 154(1) to replace the words "executive director" with "board".	Section 154 was amended in 2002.
7.03 The fairness audit include an examination of (1) the Board's fulfillment of its duty, to treat workers and their dependents fairly and in a reasonable manner in its adjudication and ongoing management of claims involving psychological injury, (2) the nature of the information the Board requests from workers, their families and treatment providers and (3) the protection of the privacy of that information.	This recommendation was deferred following implementation of the 2001 Committee of Review recommendations. A Fair Practices Officer was appointed in September 2003. The Fair Practices Office receives and investigates issues and concerns where injured workers and employers believe a WCB policy, procedure or practice has not been applied fairly. Existing policy on "chronic stress" psychological injury claims is now under review, to improve adjudication and management of these claims. All claims are covered by an up-to-date privacy policy.³

Recommendation

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| 7.04(a) No later than the date of the 2002 annual meeting, the Board members review, approve and publish (1) all the guides currently used by the Board for the adjudication of occupational disease claims, (2) a list of guides currently under development and (3) a list of the occupational diseases for which there has been a claim in the past five years for which there is no developed guide. | Policy 11/2003 publishes the current guides. |
| 7.04(b) Commencing with the 2001 annual report, the Board include in its Statistical Summary of Claims Reported data on occupational disease claims, by occupation, denied by the Board in the previous five years. | Statistics on occupational disease claims can be found on the WCB's website. |
| 7.05(a) The Board immediately provide the Office of the Worker's Advocate with electronic access to the Board's complete electronic claims files, including notes to file by various Board personnel. | This was formalized in the Letter of Understanding signed in 2002. |
| 7.05(b) The Minister take the steps necessary to ensure workers receive timely service from the Office of the Worker's Advocate. | The backlog has been substantially reduced through the introduction of a new file management process on November 1, 2004. |
| 7.06 Amend the Act to provide for the establishment of an Advisory Committee consisting of equal representation of organized labour and business, as well as representation of the Office of the Worker's Advocate and the Workers' Compensation Board. Appointments to the Advisory Committee should be consistent with similar government committees. | This recommendation was not implemented. |

F. HISTORY OF WORKERS' COMPENSATION IN SASKATCHEWAN

The Early Years Before No-Fault Compensation

The first Workmen's Compensation Act in Saskatchewan was introduced in 1911. Prior to this, the only recourse workers and their dependents had to be compensated for injury or death due to employment was to sue the employer. However, negligence had to be proved in court and few injured workers ever received any benefit.

The legislation passed in 1911 provided no-fault compensation for injured workers employed in railways, factories, mines, quarries, engineering and construction work. Individual employers were liable for compensation payments up to a maximum of \$2,000, depending upon the injured worker's earnings in the past three years. Compensation was recoverable by action in the district court. Workers could still sue an employer at common law instead of claiming compensation under the Act.

The system had disadvantages for both the employers and employees. The provisions were inadequate for workers who sustained serious injury and strict legal interpretation of the law resulted in denial of many claims. Employers could be forced into bankruptcy in the event of an award for a large amount at common law. Private liability insurance was costly and many employers did not purchase insurance. Employers who did believed they were subject to unfair competition.

Collective Liability Accident Insurance – July 1, 1930

The *Royal Commission Appointed to Enquire into Workmen's Compensation for Saskatchewan* (also known as the Anderson Royal Commission Report) was appointed in 1928 to study the problem and devise an equitable plan. The commission recommended a collective liability system similar to that in Ontario and some other provinces. As a result, *The Workmen's Compensation (Accident Fund) Act* was passed in 1929 and came into force on July 1, 1930. This Act forms the basis for workers' compensation in Saskatchewan today.

The Act established a compulsory no-fault insurance system, removed from the courts, with employers paying the premiums on collective liability based on injury costs. Employers were indemnified from suit and workers and their dependents became assured beneficiaries of compensation for wage loss and medical expenses.

The Workmen's Compensation Board, consisting of three commissioners appointed by the Lieutenant Governor, was established to administer the Act's provisions and to adjudicate claims. The first Board was chaired by Mr. N.R. Craig, K.C. and had a staff of 23. Within its first eight months (Dec. 1, 1929 to July 1, 1930), the Board had set up the administration and funds to begin payment of compensation benefits and medical aid beginning July 1, 1930. The operation of the Act was confined to industries listed in Schedule I to the Act.

The Board encountered several difficulties introducing the new system. Aside from the logistical problem of having to identify and collect premiums from all employers covered by the Act, the Board found that many employers suffered a good deal of embarrassment at not being able to forecast their payroll for assessment purposes. There was also the problem of having to set assessment

rates with very little experience to estimate the likely incidence of risk for the 20 classes and 80 groups into which Saskatchewan industries had been divided.

In its first year, the Board's operation had seven departments: the assessment department, through which funds were generated; the medical department, in which claims for compensation were reviewed; the claims department, through which all compensation and medical aid was paid; the accounting department which was responsible for handling all incoming and outgoing funds and all investments; internal and external audit departments; and finally the inspection/prevention department. Inspection services were provided by the Department of Labour. In the first years, prevention initiatives focused on inspection of workplaces, communication with employers on safe work practices and exhibits at trade shows. It eventually evolved into a department of the Board.

The Board's operations in the 1930s were affected by the Depression. Although the Board's long-term investments were sound, there was concern about the effect of falling wage rates and lower payroll assessments on the Board's ability to meet current expenditures. The Board's financial commitment was to pay benefits at amounts fixed by statute. At the same time, assessment rates for employers had to be kept as low as possible.

The Board's workload greatly increased during the 1940s, largely as a result of the economic upswing and extension of workers' compensation to more industry sectors. *The Workmen's Compensation (Accident Fund) Act* was amended several times to increase benefit levels for injured workers and their dependents. A new section enacted in 1945 provided for the appointment of a committee to review the Act at least every four years.

Amendments to increase benefits and to expand the scope and coverage of workers' compensation continued during the 1950s and 1960s. A major rewriting of the Act took place in 1955. While the new Act did not change key features of workers' compensation, it did result in clearer legislation as sections and provisions were arranged in better sequence. The 1960s saw the opening of a Saskatoon office to better serve employers and workers and the appointment of the Board's first full-time Medical Officer.

Responding to New Trends in the Workplace – 1970s

There was a comprehensive review of the workers' compensation system from 1971 to 1973, which resulted in legislative amendments in 1972 and 1974. The 1972 amendments followed an interim report in early 1972.

The 1972 amendments to *The Workmen's Compensation (Accident Fund) Act* provided for the appointment of an independent Workman's Advocate within the Department of Labour to assist employees and their dependents with claims.

Another change involved the transfer of the Board's responsibility for accident prevention to the Department of Labour. This decision was made to concentrate programs in one organization. The transfer coincided with the passage of *The Occupational Health Act, 1972* and increased emphasis on health and safety concerns in the workplace.

Other legislative amendments increased some benefits and extended coverage to some categories of employment previously excluded.

A new Workers' Compensation Act was enacted in 1974. It significantly increased compensation benefits to levels that reflected increases in wages and inflation. Other changes, including the replacement of the term "workmen" with "workers", acknowledged the growing participation of women in the paid labour force and their financial contribution to families. The coverage of occupational classifications and workplaces was expanded. All workers, except farm workers, teachers, domestic workers and workers in a few other occupational classes were covered by this Act. New general regulations dealing with payroll statements, assessments, employer coverage, contractors and subcontractors, rural telephone companies, forest operations and the requirement to post notices were enacted.

In 1977, amendments were made to *The Workers' Compensation Act, 1974* respecting the scale of compensation for surviving spouses, permanent and temporary total disability and permanent injuries.

In the intervening years, the Board had made orders respecting exclusions from coverage of the Act, payment of assessments and adjustments to the income ceiling for the purpose of calculating compensation.

An Income Maintenance Program – January 1, 1980

A new system of compensation benefits was introduced by *The Workers' Compensation Act, 1979*. The system shifted emphasis from pensions based on physical disability to compensation to maintain income. Workers who experience loss of earning capacity due to work injury were entitled to 75 per cent of gross wages, up to the maximum in effect at the time of injury, even if the injury forces them to accept lower paying jobs. Benefits would continue as long as there was a loss in earning capacity or to age 65. Benefits were integrated

with any earned income or with any Canada Pension Plan disability benefits and protected against inflation by a cost of living escalator.

In addition to income maintenance benefits, the Act provided for lump sum payments awarded to workers in recognition of permanent functional impairment. Payments could range from a minimum of \$500 to a maximum of \$10,000, with all workers receiving the same amount for the same type of impairment.

The 1979 Act provided for an annuity at age 65 for workers who received income maintenance benefits for 24 consecutive months.

Amendments were made in the early 1980s to improve benefits for workers who were injured prior to the coming into force of the new Act on January 1, 1980.

Program Changes Since 1985

Amendments in 1985 raised the ceiling on covered earnings to \$48,000 per year, the highest in Canada, and changed the basis for calculating benefits as of September 1, 1985, to 90 per cent of net earnings. Changes were made in awards for permanent impairments, benefits and educational allowances for dependent children, death benefits, spousal allowances, and provisions for annual increases in some payments based on the Consumer Price Index. The new legislation gave workers and employers access to claim information for appeal purposes. A significant amendment that occurred in 1985 was the amendment of the dependent spouse provision to abolish the practice of terminating benefits upon remarriage, in compliance with the then newly enacted section 15 of the *Canadian Charter of Rights and Freedoms*.

Further benefit improvements occurred in 1988 and 1993, including increasing the rating schedule range for permanent physical impairment from a minimum of \$1,100 to a maximum of \$22,600, increased death benefits and lump sum payment of annuity benefits.

In 1998, the Act was amended to enshrine "benefit of the doubt" in legislation, extend pensions to dependent spouses who were receiving benefits and extend survivor benefits to common law spouses with whom the worker had been living for at least two years or if they were the natural or adoptive parents of a child. Board accountability was also improved through amendments which required the Board to hold joint annual meetings with stakeholders, required consultation on the re-appointment of Board members, and prohibited the Chair of the Board to act as the Executive Director and chief administrative officer of the Board.

In 1999, *The Special Payment (Dependent Spouses) Act* authorized the Board to make a one-time, non-taxable payment of \$80,000, upon application within two years of passage of the Act, to dependent spouses who were in receipt of compensation benefits and those benefits were terminated when they remarried or entered a common-law relationship, prior to September 1, 1985.

Amendments in 2002 included improvements to benefits such as increasing and indexing the death benefit, increasing the permanent functional impairment award, increasing the maximum wage rate in three stages from \$48,000 to \$55,000, and ensuring that death benefits are provided to workers' families where the death occurred in the workplace, unless the death is not work-related. In addition to these legislative amendments, the Board implemented a significant number of policy changes as a result of the legislated review.

As the result of research undertaken by the Manitoba government in the area of occupational disease and the occupation of fire fighting, a legislative amendment was made in 2003 enshrining a rebuttable presumption that five forms of cancer (primary site brain cancer; primary site bladder cancer; primary site kidney cancer; primary non-Hodgkins lymphoma; and primary leukemia) are occupational diseases for full-time members of a fire department who are regularly exposed to the hazards at a fire scene, other than a forest fire. An amendment in 2005, expanded the list of occupational diseases to include: primary site ureter cancer; primary site colorectal cancer; primary site lung cancer; primary site testicular cancer; and an injury to the heart that manifests within 24 hours after attendance at an emergency response.

G. HISTORICAL SUMMARY OF EXCLUSIONS FROM COVERAGE

Introduction

Over the years there have been numerous amendments to the workers' compensation legislation and regulations respecting who is covered. This document provides a summary of these changes since 1930.

History

1930 – Section 3 of the new Act, *The Workmen's Compensation (Accident Fund) Act*, which came into force in 1930, stated that this Act applies "to all employers and workers engaged in, about or in connection with the industries set forth in Schedule I". In addition, this section stated that the Act did not apply to persons employed by:

- The Canadian Pacific Railway Company
- The Grand Trunk Pacific Railway Company
- The Canadian Northern Railway Company
- The Canadian National Railway Company
- Any companies operating under the name of the Canadian National Railways (extensive list included in legislation)

But that an application can be made to the Workmen's Compensation Board for these operations to be brought within the scope of the Act. Subsection 3(4) specifically states that the Act does not apply to:

- persons whose employment is of a casual nature and who are employed otherwise than for the purposes of the employer's trade or business;
- outworkers – defined as a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired or adapted for sale in his own home or on other

premises not under the control or management of the person who gave out the materials; and

- the industry of farming or ranching or domestic or menial servants or their employers.

In addition to these listed exclusions, the definition of "workman" specifically states that the definition does not include teachers and telegraph and telephone operators. These occupations are, therefore excluded from the application of the Act.

The definition of "employer" includes "any person, firm, association, body or corporation having in service under a contract of hiring or apprenticeship, written or oral, express or implied, any workman engaged in any work in, about or in connection with an industry to which this Act applies . . .". This includes the Government of Saskatchewan, municipal corporations and school boards, and commissions and boards having management of any work or service operated for a municipal corporation.

It is important to note that a separate Act – *The Workmen's Compensation Act* – applies to employment in the railway, factory, mine, quarry or engineering work, or about any building which is being constructed, repaired or demolished.

1939 – The 1939 Annual Report of the Workmen's Compensation Board states that in response to repeated requests from certain rural telephone companies and associations in the Province, the benefits of the Act were extended to rural telephone companies on a voluntary basis by application. In addition, the cities of Regina, Saskatoon and Moose Jaw also requested compensation be made available to their employees.

1946 – The definition of "workman" was amended to remove the exclusion of telephone operators. As a result, telephone operators came within the scope of the Act.

Also in 1946, the regulations were amended to include rural telephone companies, specifically operators and executive officers. In addition:

- janitors and maintenance employees in apartment buildings, offices and industrial/commercial and educational institutions;
- hotels and restaurants;
- mercantile businesses such as mail order and department stores and retail stores;
- wholesale and retail distribution of farm machinery and implements and repairs; and
- hospitals, nursing home, rest homes and alike were included as industries within the scope of the Act.

1948 – Section 3 of the Act was amended to remove the exclusion of “the brotherhood of locomotive firemen and enginemen”, locomotive firemen, wipers, hostlers, watchmen on locomotives and coal passers.

1949 – Section 2 of the Act was amended to bring all rural municipalities within the scope of the Act, including reeves, councilors and secretary treasurers and any other employees of all rural municipalities that the Workers’ Compensation Board designates. This new section also stipulated the annual earnings of reeves and councilors for the purposes of determining compensation.

1950 – The definition of “workman” was amended to remove the exclusion of telegraph operators. As a result, telegraph operators came within the scope of the Act.

1951 – An amendment to the Act was made to include “learners” within the scope of the Act. A “learner” was defined as a person who, although not under a contract of service or apprenticeship, becomes subject to the hazards of an industry within the scope of the Act for the purposes of undergoing training or probationary work stipulated by the employer.

In 1951, the regulations were also amended to bring railway signalmen under the scope of the Act, following an application by the Brotherhood of Railroad Signalmen to the Workers' Compensation Board for protection of the Act.

1952 – The International Brotherhood of Locomotive Engineers applied to the Workmen's Compensation Board for protection of the Act. A referendum was held and the majority ballot was for inclusion under the Act. The regulations were amended to include this group within the scope of the Act.

1953 – In this year, the government passed new regulations detailing all the industry classes covered by the Act.

1954 – An amendment to the Act resulted in a number of previously excluded railway workers being included within the scope of the Act. These included: the brotherhood of locomotive engineers, maintenance of way employees, locomotive engineers, section men and foremen, bridge and building foremen and men, signal maintainers and repairmen, pump repairmen, pumpmen, extra gang foremen, snowplow and flanger foremen, pile drivers, hoisting engineers, and any other employees working on the maintenance of way.

The Brotherhood of Railway Trainmen applied to the Workers' Compensation Board for protection of the Act. Specifically, conductors, trainmen, train baggagemen, train brakemen, train flagmen, yardmasters, assistant yardmasters, yard agents, transfer men, yard conductors, yard foremen, switchmen, ground switch tenders, pilots, and engine herders were deemed to be protected by the Act as and from March 26, 1954.

Also in 1954, two additional orders were passed, which resulted in the inclusion within the scope of the Act: 1) the industry class/group - all Co-operative Purchasing Associations and all Wholesale Distributors

involved in oil, gasoline, greases and other petroleum products; and 2) restaurants and mercantile businesses with fewer than two workers.

1955 – The Act was amended to remove most of the exclusions for railway workers. Those that are still exempt from the Act are: station agents, assistant agents, dispatchers, telegraphers, linemen and towermen.

In addition, new regulations were enacted on June 30, 1955, which excluded industries and occupations that are sporadic and transient in the nature of the work and where it would be impracticable to obtain accurate records. These industries and occupations are:

- businesses in the seeding, seed-growing, fruit growing, gardening, horticulture, livestock, poultry or bee keeping, picking, grading, packing, hauling, handling or storage of wool, fowl, fruit or vegetables;
- hand laundries;
- barber shops and shoe shine establishments;
- skating/curling rinks;
- operation of educational institutions, practice of surgery, medicine, dentistry or other healing arts and veterinary work;
- commercial travelers, unless employed by a wholesaler;
- auctioneers;
- commercial flying;
- taxidermists;
- junk dealers;
- architects;
- volunteer employees except in Mine Rescue Work;
- board and canoe livery;
- operation of race tracks, fairs, exhibitions, circuses and traveling shows;

- fishing, ship building, operation of and work upon wharves, operation of dry docks, operation of steam vessels, works for the purpose of the business of a navigation company, operation of vessels and marine wrecking;
- surveyors and their employees;
- threshing and hauling of grain from a farm except where hauling is done by an employer within the scope of the Act;
- health inspectors;
- poundkeepers;
- operation of swimming pools, wading pools, amusement grounds, gymnasiums and sports clubs;
- janitors unless employed in an industry within the scope of the Act;
- drilling and boring of wells for water, mining, other than for coal; and
- cutting, hauling sawing or manufacturing of wood for the purpose of fuel only;
- all industries carried on in church corporations, organizations or assemblies or bodies, religious brotherhoods, sisterhoods and societies; the Red Cross, humane societies, fraternal societies and all other societies existing only for charitable, social or fraternal purposes;
- some operations engaged in wood production under limits identified in the regulation; and
- construction work undertaken by a person not regularly engaged in the business and is doing this work as part of or incidental to an industry within the schedule attached to the Act.

1959 – An order was passed by the Lieutenant Governor in Council which removed surveyors and consulting engineers from the excluded industries. As a result, these occupations are included within the scope of the Act.

1962 – The Act was amended to provide coverage for operators of “equipment” for an employer whose industry is within the scope of the Act. “Equipment” is defined as trucks, bulldozers, draglines and power-shovels and any other machine or implement or apparatus declared by the Board as equipment. In addition, the Act extended coverage to volunteer municipal fire brigades upon application to the Board.

1969 – The General Regulations under *The Workmen's Compensation (Accident Fund) Act* were amended. Section 17 of these regulations stipulate the industries and occupations that are excluded from the operation of the Act:

- aerial photography;
- aircraft overhaul and repair;
- amusement grounds;
- apiaries;
- artificial breeding of livestock;
- auctioneering when not carried on as part of or incidental to a main industry within the scope of the Act;
- auditors;
- barber shops, beauty parlors and shoe shine establishments;
- boat and canoe livery;
- bowling alleys;
- brushcutting and land clearing for farmers;
- business offices;
- chimney cleaning

- diving when not carried on as part of or incidental to a main industry within the scope of the Act;
- feed lots, commercial;
- film production;
- flying, commercial;
- gymnasiums;
- hatcheries;
- janitorial and caretaking services in villages and hamlets when not carried on as a business or as part of or incidental to a main industry within the scope of the Act;
- junk or scrap metal dealers;
- landscaping when not carried on as a business or as part of or incidental to a main industry within the scope of the Act;
- laundries, hand;
- lifeguards;
- lightning rod erection;
- livestock dealerships when not carried on as a business or as part of or incidental to a main industry within the scope of the Act;
- lodges and camps, seasonally operated;
- mosquito control;
- mushroom farming;
- newsboys employed in delivering newspapers or other publications and newsboys selling upon the streets;
- nurseries;
- physiotherapists;
- pool rooms and billiard parlors;
- poultry farming;
- poundkeepers;
- protection services in chemical and industrial plants;

- radio and television stations;
- radiologists;
- riding academies;
- school administration;
- school bus operation and servicing;
- skating and curling rinks;
- sports clubs;
- swimming and wadding pools;
- taxidermists;
- threshing and hauling of grain from a farm except where hauling is done by an employer within the scope of the Act;
- travelers, commercial, unless employed by a wholesaler having a warehouse or manufacturer within the province;
- union organizations;
- veterinarians;
- voluntary workmen including members of a municipal fire brigade except in mine rescue work and for Emergency Measures Organization;
- the business of seedmen, seed-growing, fruit growing, gardening and horticulture; keeping or breeding of livestock, poultry or bees;
- picking, grading packing, hauling, handling and storage of wool, fowl, fruit or vegetables, or products other than grain, carried on by producer
- co-operative associations;
- practice of surgery, medicine, dentistry or other healing arts;
- operation of race tracks, fairs, exhibitions, circuses and traveling shows;
- fishing, ship building, operation of and work upon wharves, operation of dry docks, operation of steam vessels, works for the

purpose of the business of navigation, operation of vessels and marine wrecking;

- drilling, boring of wells for water;
- mining other than coal;
- cutting, hauling, sawing or manufacturing of fuel only except when carried on as part of or incidental to a main industry within the scope of the Act;
- all industries carried on in church corporations, organizations or assemblies or bodies, religious brotherhoods, sisterhoods and societies; the Red Cross, humane societies, fraternal societies and all other societies existing only for charitable, social or fraternal purposes;
- some operations engaged in wood production under limits identified in the regulation;
- an employer in forestry operations who is not operating as part of another forestry operation or under a subcontract and who is engaged in producing all or any of the products listed in the regulations, but whose production of each one is less than a quantity as specified by the Board;
- custom sawyers and family or other partnerships operating as a unit in forestry operations with no direct employees are excluded from the Act; and
- construction work by a person who is not regularly engaged in such business and has not established an industry on the business and is not doing such work as part of or incidental to an industry which is covered by the Act.

1970 – The definition of “workman” in the Act was amended to include members of a municipal fire brigade. At the same time the section of the Act that referenced the voluntary application for coverage of municipal

fire brigades was removed. The result is that municipal fire brigades are within the scope of the Act, and do not need to apply for coverage.

The Act was further amended to stipulate that employees of the University of Saskatchewan and the Wascana Centre Authority are within the scope of the Act.

1971 – The General Regulations were amended to remove the following industries/occupations from the exclusion list:

- aircraft overhaul and repair;
- chimney cleaning;
- janitorial and caretaking services in villages and hamlets when not carried on as a business or as part of or incidental to a main industry within the scope of the Act;
- school administration;
- school bus operation and servicing; and
- skating and curling rinks.

In addition, the provision respecting voluntary workmen was amended by removing the words: “voluntary workmen including members of a municipal fire brigade except in mine rescue work and for Emergency Measures Organization” and replacing with: “Voluntary workmen, except in mine rescue work for Emergency Measures Organization and members of a municipal fire brigade.”

As a result of the amendment, these industries/occupations were included within the scope of the Act.

1972 – The Act was amended to include local improvement district committees within the scope of the Act.

1974 – The definition of “worker” was amended to include, after January 1, 1975, an executive officer of a corporation or other employer where the executive officer is carried on the payroll.

In addition, the Act was extended to allow for the council members of a city, town or village to be covered by the Act on a voluntary basis, on application to the Board.

The Non-Application provision of the Act was re-written, but there was no change to the occupations exempt from the Act.

Section 17 of the regulations respecting exclusions was repealed and a new Section 17 enacted. The exclusions included the following occupations/industries:

- aerial photography;
- clergy;
- flying, commercial;
- newsboys employed in delivering newspapers or other publications and newsboys selling upon the streets;
- sports clubs, except for administrative and maintenance employees;
- travelers, commercial, unless employed by a wholesaler having a warehouse or a manufacturer having a factory within the province;
- voluntary workmen, except mine rescue work, Emergency Measures Organization and members of a municipal fire brigade;
- operation of circuses and traveling shows;
- lodges and camps, seasonally operated;
- the cutting, hauling, or sawing of wood for fuel only except when carried on as part of or incidental to a main industry within the scope of the Act;
- veterinarians, radiologists, surgeons, doctors, dentist or other professionals of the healing arts, but this exclusion does not include the office or other staff of the professional listed;
- an employer in forestry operations who is not operating as part of another forestry operation or under a subcontract and who is engaged in producing all or any of the products listed in the

regulations, but whose production of each one is less than a quantity as specified by the Board;

- custom sawyers and family or other partnerships operating as a unit in forestry operations with no direct employees are excluded from the Act; and
- construction work by a person who is not regularly engaged in such business and has not established an industry on the business and is not doing such work as part of or incidental to an industry which is covered by the Act.

Later in 1974, a further amendment was made to clarify the language respecting commercial travelers. The new provision reads as follows:

"travellers, commercial, whose employers do not have a place of business within the province"

1975 – The regulations were amended to exclude the industry of commercial fishing. It seems this was missed in the re-writing of the regulations.

1977 – The Act was extended to include community college boards and the University of Regina within the scope of the Act.

The regulations were also amended in 1977. Four previously excluded occupations/industries were removed from the regulations:

- aerial photography;
- flying, commercial;
- lodges and camps, seasonally operated; and
- veterinarians, radiologists, surgeons, doctors, dentist or other professionals of the healing arts, but this exclusion does not include the office or other staff of the professional listed.

As a result, these industries/occupations are within the scope of the Act.

In 1977, the schedule of industries within the scope of the Act was amended. The amendment replaced the words "Air Canada" with "commercial air service licenced for such purpose by The Canadian

Transport Commission and having a place of business within the province”.

1979 – The definition of “worker” was amended to remove the reference to teachers. Instead, “teachers as defined in *The Education Act*” is included in the Non-Application section of the Act along with workers involved in the farming and ranching, and other categories of employment.

1980 – The General Regulations were re-written in 1980, following passage of the new Act in 1979. The new regulations stipulated the following industries and occupations were excluded from application of the Act:

- artists, entertainers or performers;
- circus operations, traveling shows and tradeshow;
- clergy;
- commercial fishing;
- construction, in respect of a residence or related building by the owner for his own use;
- consulates and foreign embassies;
- dairy farming;
- demonstrating and exhibiting;
- employment in respect of a private home function by the resident;
- feedlot or livestock yard operations, not in connection with an industry within the scope of the Act;
- flying operations not having a place of business in the province and not licensed by the Canadian Transport Commission;
- fur farms;
- grazing co-operatives;
- Indian bands or band endeavours on reserves;
- land clearing, brush cutting or stumping when performed for an industry not within the scope of the Act;

- livestock brokers;
- mobile farm feed service or portable seed-cleaning plants;
- newsboys employed in delivering newspapers or other publications;
- peddling or door-to-door sales;
- piggery farms;
- poultry farms;
- salesmen who are not restricted to selling goods for one manufacturer or supplier;
- salesman whose employers do not have a place of business in the province;
- selling or similar canvassing on streets;
- show judges;
- sports professionals, sport instructors, players and coaches;
- trapping;
- trucking firms based in the United States of America employing only American citizens;
- voluntary workers, except in mine rescue work, Emergency Measures Organization and members of a municipal fire brigade; and
- cutting of, hauling of and sawing of wood for fuel except when the cutting, hauling or sawing is carried on as part of or incidental to a main industry within the scope of the Act.

In addition, an employer in forestry operations who:

- is not operating as part of another forestry operation or under a subcontractor, and
- is engaged in producing any product and whose production of each product is less than a quantity that the Board may specify,
- is excluded from the provisions of the Act.

Finally, custom sawyers and family or other partnerships operating in the forestry industry with no workers paid directly, are excluded from the application of the Act.

- 1981 – The Non-Application section of the Act was amended to specify “school teachers” rather than teachers as defined in *The Education Act*.
- 1985 – *The Workers’ Compensation Act Exclusion Regulations* were enacted on August 12, 1985.

The regulations were amended resulting in minor changes to the exclusion provision from the 1980 regulations:

- the construction provision was expanded to include the construction of own residence, including alterations and improvements and performance of domestic functions in the residence;
- the newsboy provision was removed;
- inclusion of “industries that have no place of business in Saskatchewan that provide: (a) on-site warranty service, start-up supervision, training or service incidental to a sale or lease arrangement; or (b) consulting or similar services; unless those industries employ workers who are resident in Saskatchewan.”; and
- the custom sawers provision was removed.

No amendments to the exclusion provision have occurred since 1985.

H. SAFETY ASSOCIATION GRANTS AND TIME LOSS INJURY RATES (1998-2005)

Safety Associations and Classes of Industry	Description	1998	1999	2000	2001	2002	2003	2004	2005	% Change 1998-2005
Saskatchewan Construction Safety Association Inc. (SCSA)		\$535,000	\$545,000	\$595,000	\$750,000	\$688,379	\$735,000	\$800,000	\$850,000	58.88
B11	Construction Trades	8.54	7.12	8.51	9.19	8.72	10.04	8.67	9.28	8.67
	Number of Employers	1,099	1,135	1,131	1,109	1,095	1,127	1,181	1,206	9.74
	Time Loss Claims	348	294	334	331	363	370	332	367	5.46
B12	Residential Construction	10.29	9.61	12.02	9.81	11.30	10.95	9.45	9.84	(4.37)
	Number of Employers	2,167	2,234	2,278	2,271	2,363	2,411	2,467	2,684	23.86
	Time Loss Claims	382	412	424	328	397	385	362	388	1.57
B13	Commercial, Industrial Construction	11.07	11.00	12.26	10.70	10.92	10.95	9.09	7.93	(28.36)
	Number of Employers	1,259	1,320	1,340	1,328	1,371	1,394	1,410	1,492	18.51

Safety Associations and Classes of Industry	Description	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	% Change 1998- 2005
	Time Loss Claims	437	458	454	402	515	480	336	355	-18.76

Safety
Associations
and Classes
of Industry

Description	1998	1999	2000	2001	2002	2003	2004	2005	% Change 1998- 2005
Saskatchewan Association of Health Organizations (SAHO)	\$386,944	\$410,212	\$410,212	\$460,750	\$371,126	\$645,000	\$645,000	\$755,441	95.23
G22 Health Care	5.91	5.70	6.11	6.78	6.85	7.20	6.83	6.59	11.51
Number of Employers	615	615	347	344	352	358	385	416	-32.36
Time Loss Claims	2,036	2,057	2,280	2,488	2,554	2,713	2,706	2,468	21.22
Saskatchewan Forestry Safety Association (SFISA)	\$250,000	\$250,000	\$290,000	\$344,400	\$398,024	\$401,000	\$378,590	\$432,667	73.07
F11 Conventional Logging Operations	25.25	24.24	26.12	16.92	16.89	30.89	8.54	21.66	(14.22)
Number of Employers	259	236	204	201	172	162	124	95	-63.32
Time Loss Claims	41	33	32	20	17	22	9	15	-63.41
F12 Mechanical Logging Operations	2.35	2.80	5.98	4.87	3.66	5.29	3.18	4.24	80.43

Safety Associations and Classes of Industry	Description	1998	1999	2000	2001	2002	2003	2004	2005	% Change 1998-2005
	Number of Employers	170	178	216	195	148	145	131	129	-24.12
	Time Loss Claims	18	14	23	16	13	15	12	18	0.00
F13	Log/Pulpwood Hauling	6.79	6.52	6.04	7.07	7.74	11.73	5.50	5.15	(24.15)
	Number of Employers	237	249	257	233	230	222	203	207	-12.66
	Time Loss Claims	22	24	21	22	26	27	18	17	-22.73
F22	Planing, Sawing, Mills, Waferboard	11.41	7.36	9.73	10.79	6.68	4.54	4.68	4.56	(60.04)
	Number of Employers	143	147	143	126	140	128	132	132	-7.69
	Time Loss Claims	180	125	153	156	103	72	77	78	-56.67
Saskatchewan Heavy Construction Safety Association (SHCSA)		\$170,623	\$235,040	\$ 302,000	\$239,208	\$336,122	\$368,791	\$282,400	\$378,736	121.97
R11	Road Construction and Earthwork	4.67	4.80	5.44	5.45	4.96	5.96	5.74	5.67	21.41

Safety Associations and Classes of Industry										% Change 1998- 2005
	Description	1998	1999	2000	2001	2002	2003	2004	2005	
	Number of Employers	1,536	1,608	1,643	1,589	1,582	1,643	1,646	1,755	14.26
	Time Loss Claims	258	254	255	231	202	226	234	253	-1.94
Prairie Implement Manufacturers Association (PIMA)		\$190,400	\$213,108	\$237,360	\$324,875	\$203,903	\$286,157	\$294,811	\$289,133	51.86
C62	Agricultural Equipment	17.02	14.03	15.57	17.19	18.32	15.59	12.75	10.77	(36.72)
	Number of Employers	1,334	1,328	1,334	1,338	1,326	1,329	1,323	1,323	0.82
	Time Loss Claims	306	291	367	315	332	325	305	303	0.98

Safety Associations and Classes of Industry	Description	1998	1999	2000	2001	2002	2003	2004	2005	% Change 1998-2005
C6 Safety Association of Saskatchewan Inc (C6)		\$145,000	\$180,000	\$199,576	\$250,825	\$320,884	\$320,871	\$278,227	\$300,000	106.90
C61	Automotive, Implement Sales and Service, Automotive Service Shops, Towing	3.36	3.01	3.27	3.23	3.21	2.81	2.47	2.82	(16.07)
	Number of Employers	1,327	1,323	1,296	1,280	1,258	1,214	1,197	1,200	9.57
	Time Loss Claims	477	415	447	458	473	403	393	436	8.60
Service and Hospitality Safety Association of Saskatchewan (SHSA)		\$180,000	\$149,800	\$198,600	\$189,300	\$269,126	\$169,796	\$351,550	\$277,700	54.28
S21	Hostels, Independent	1.73	1.36	1.66	1.73	1.85	1.74	1.94	2.18	26.01

Safety
Associations
and Classes
of Industry

Description	1998	1999	2000	2001	2002	2003	2004	2005	% Change 1998- 2005
Services									
Number of Employers	778	800	800	811	803	814	829	841	8.10
Time Loss Claims	171	147	184	187	211	199	246	266	55.56
S22 Restaurants, Catering, Dry Cleaning	2,90	2,83	3,09	3,10	3,00	2,62	2,33	2,24	(22.76)
Number of Employers	1,832	1,796	1,822	1,826	1,819	1,805	1,850	1,848	0.87
Time Loss Claims	531	567	621	599	591	510	492	458	(13.75)
S23 Motels, Taxis	3,32	3,15	2,84	3,21	2,96	3,21	3,15	2,58	(22.29)
Number of Employers	840	842	846	853	868	866	865	857	2.02
Time Loss Claims	323	327	289	313	293	312	337	270	(16.41)
Saskatchewan Meat Industry Safety Association (SMISA)	\$45,600	\$70,300	\$82,600	\$108,300	\$94,288	\$117,550	\$132,870	\$137,586	201.72
M72 Processing Meat, Poultry and Fish	11,05	11,71	13,19	11,09	10,21	10,05	20,05	12,95	(60.82)

Safety Associations and Classes of Industry	Description								% Change 1998-2005
		1998	1999	2000	2001	2002	2003	2004	2005
	Number of Employers	42	49	51	45	47	44	53	30.95
	Time Loss Claims	608	645	745	767	683	689	495	319 (47.53)
Saskatchewan Trucking Association		\$164,960	\$216,764						
Saskatchewan Professional Drivers Safety Council Inc (SPDSC)				\$216,000	\$160,000	\$406,000	\$516,000		
T42	Transportation, Courier, Commercial Bus	9.41	10.03	10.62	10.09	10.13	9.74	8.82	8.53 (9.35)
	Number of Employers	2,375	2,410	2,456	2,371	2,384	2,390	2,434	2,540 6.95
	Time Loss Claims	864	906	981	881	852	824	799	833 (3.59)
Total Safety Association Grants/Assessments Collected		\$1,933,000	\$2,233,000	\$2,635,000	\$2,762,000	\$3,185,000	\$3,369,000	\$3,227,000	\$3,449,000 78.43

I. OCCUPATIONAL DISEASES – 1997-2006 (JUNE)

Allowed Claims

Disease & Disease Sub-Category			Year									
			2006	2005	2004	2003	2002	2001	2000	1999	1998	1997
Infectious & Parasitic Diseases	756											
Acariasis (Including Scabies, Chiggers, Mites)	41	1	2		1		28	1	2	6		
Contacts with or Carriers of Disease	715	87	132	88	104	69	55	78	51	51		
Neoplasms, Tumors, & Cancer	21											
Malignant Neoplasms & Tumors	21	6		4			1	2	1	3	4	
Other	6,555											
All Other Diseases	6,555	331	795	746	524	990	904	691	665	519	390	
Prosthetic Devices	309											
Damage To or Loss of Prosthetic Devices	309	8	18	24	25	45	40	23	29	35	62	

Disease & Disease Sub-Category		Year									
		2006	2005	2004	2003	2002	2001	2000	1999	1998	1997
Skin	752										
Allergic Dermatitis	177	13	12	22	11	16	6	16	25	37	19
Contact Dermatitis & Other Eczema	399	31	36	34	22	48	42	52	48	44	42
Infections of the Skin & Subcutaneous Tissue - All	142	6	12	15	11	14	15	12	14	16	27
Irritant Dermatitis	29	1		1	2			3	6	7	9
Other Contact Dermatitis	4		1	1					1		1
Pruritus & Related Conditions	1							1			
Systemic Diseases & Disorders	3,318										
Asbestosis	127	1	8	11	6	12	19	18	13	3	36
Bursitis	101	8	6	10	11	18	15	14	5	8	6
Carpal Tunnel Syndrome	1,132	74	118	203	91	122	111	132	103	107	71
Chronic Obstructive Pulmonary Disease & Allied Conditions (all except Extrinsic Asthma)	67	4	5	4	5	1	6	9	3	14	16
Disorders of the Ear, Mastoid Process, Hearing	896	84	85	111	78	87	71	88	105	101	86
Disorders of the Eye, Adnexa, Vision	586	37	64	83	63	55	59	39	67	55	64
Extrinsic Asthma	74	5	13	7	5	6	7	10	5	12	4
Inflammation of Joints, Tendons, Muscles - Other	304	19	32	53	24	66	46	18	17	19	10

Disease & Disease Sub-Category	Year										
	12,444	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997
Systemic Diseases & Disorders (con't)											
Inflammatory & Toxic Neuropathy, Toxic Polyneuropathy	5		1	1		1		1	1		
Legionnaire's Disease	1								1		
Multiple Chemical Sensitivity	8		1	3	1			1	2		
Pneumoconioses (All Except Asbestosis & Silicosis)	1	1									
Pneumonitis - Other	9			3	1		1	1	1	1	1
Raynaud's Syndrome	6		1	1		1	1	1			1
Silicosis	1								1		
Traumatic Injuries & Disorders	733										
Symptoms Involving Digestive & Urinary System	26	2	3		1	8		5	2	2	3
Symptoms Involving Nervous & Musculoskeletal Systems	123	7	15	13	13	14	13	16	13	9	10
Symptoms Involving Respiratory System & Chest	584	30	137	70	37	36	27	23	42	52	130
Totals for Allowed Claims	12,444	40	158	91	53	60	42	48	63	64	145

Disallowed Claims

Disease & Disease Sub-Category

Year

		2006	2005	2004	2003	2002	2001	2000	1999	1998	1997
Infectious & Parasitic Diseases	72										
Acarinosis (Including Scabies, Chiggers, Mites)	1										1
Contacts with or Carriers of Disease	71	1	50	7		1	3	3	4	2	
Neoplasms, Tumors, & Cancer	20										
Malignant Neoplasms & Tumors	17	4	1	1	3	1	1	1		1	4
Neoplasms, Tumors & Cancer, Unspecified	3	1		1						1	
Other	2,981										
All Other Diseases	2,981	183	349	351	170	201	175	334	413	427	378
Prosthetic Devices	63										
Damage To or Loss of Prosthetic Devices	63	1	4	5	6	5	8	7	8	14	5

Disease & Disease Sub-Category

Year

		2006	2005	2004	2003	2002	2001	2000	1999	1998	1997
Skin	277										
Allergic Dermatitis	57	1	12	4		4	2	5	8	11	10
Contact Dermatitis & Other Eczema	137	17	13	18	12	9	7	15	18	17	11
Infections of the Skin & Subcutaneous Tissue - All	70	7	6	5	2	7	4	8	14	8	9
Irritant Dermatitis	13							1	2	7	3
Systemic Diseases & Disorders	1,843										
Asbestosis	12		1	4	2			3	1	1	
Bursitis	53	5	9	6	2	2	8	4	7	5	5
Carpal Tunnel Syndrome	1,042	56	91	118	56	68	52	139	151	150	161
Chronic Obstructive Pulmonary Disease & Allied Conditions (all except Extrinsic Asthma)	36	3	4	3	3	1		4	3	9	6
Disorders of the Ear, Mastoid Process, Hearing	410	25	56	66	22	20	34	53	49	37	48
Disorders of the Eye, Adnexa, Vision	127	8	14	15	2	10	14	20	14	18	12
Extrinsic Asthma	30	5	5	3	1	3		3	5	2	3
Inflammation of Joints, Tendons, Muscles - Other	116	8	20	23	10	9	7	7	16	13	3
Inflammatory & Toxic Neuropathy, Toxic Polyneuropathy	3		1	1				1			

	2006		2005	2004	2003	2002	2001	2000	1999	1998	1997
Systemic Diseases & Disorders (con't)											
Multiple Chemical Sensitivity	6	1	1	1	2	1					
Pneumoconioses (All Except Asbestosis & Silicosis)	1						1				
Pneumonitis - Other	4		1		1				1	1	
Raynaud's Syndrome	2					1			1		
Silicosis	1								1		
Traumatic Injuries & Disorders	181										
Symptoms Involving Digestive & Urinary System	12			1		4		2	2	2	1
Symptoms Involving Nervous & Musculoskeletal Systems	60	1	7	12	2	10	3	9	11	2	3
Symptoms Involving Respiratory System & Chest	109	13	9	18	3	2	4	8	8	20	24
Totals for Disallowed Claims	5,437	15	18	32	8	18	8	19	24	25	28
	2006		2005	2004	2003	2002	2001	2000	1999	1998	1997
Totals for all claims	17,881	771	1,515	1,540	1,044	1,627	1,475	1,274	1,247	1,126	1,020

J. MAP OF GOVERNANCE RESPONSIBILITIES

Responsibility	Prepare/Propose /Inform	Recommend	Review/ Advise	Approve/ Decide **	Execute/ Report ***
Organizational direction and performance					
Legislative changes	Executive management or Board	Board	Board	Executive Gov't	Executive Gov't
Vision, mission, and values of the organization	Executive management	CEO	Board	Board	Executive management
Strategic direction	Executive management	CEO	Board	Board	Executive management
Organization structure	Executive management		Board	CEO	Executive management
Business processes and practices	Executive management		Board	CEO	Executive management
Multi-year business plan	Executive management	CEO	Board	Board	Executive management
Annual operating and capital budgets	Executive management	CEO	Board	Board	Executive management
Corporate performance measures (e.g., scorecard)	Executive management	CEO	Board	Board	Executive management
Annual report	Executive management	CEO	Board	Board	Executive management
Monitoring of administrative compliance with legislation and Board policy	Executive		Board		Executive

Responsibility	Prepare/Propose /Inform	Recommend	Review/ Advise	Approve/ Decide **	Execute/ Report ***
	management				management
Corporate communications					
Strategy and corporate image	Executive management	CEO	Board	Board	Executive management
Stakeholder communications	Executive management	CEO	Board	Board	Executive management and Board
Human resources management and performance					
CEO appointment	Chairperson on behalf of the Board	Chairperson		Board	Executive management
CEO salary	Chairperson on behalf of the Board	Chairperson		Board	Chairperson
Executive appointments	CEO		Board	CEO in consultation with Board	CEO
Executive salary ranges	CEO		Board	CEO in consultation with Board	CEO
CEO performance objectives and evaluation	Board in consultation with CEO		Board in consultation with CEO	Board in consultation with CEO	Chairperson
Executive performance objectives and evaluation	CEO in consultation with executives		Board	CEO in consultation with	CEO

Responsibility	Prepare/Propose / Inform	Recommend	Review/ Advise	Approve/ Decide **	Execute/ Report ***
				executives	
Corporate HR strategies	Executive management	CEO	Board	CEO	Executive management
Collective bargaining mandate	Executive management	CEO	Board	Board	Executive management
Collective bargaining agreement	Executive management	CEO		Board	Executive management
Board performance objectives and evaluation	Board in consultation with CEO		Board in consultation with CEO	Board	Board
Succession plan – management	Executive management	Executive management	Board	CEO	Executive management
Succession plan - CEO	CEO and/or Board	CEO and/or Board	Board	Board	Board
Financial management and performance					
Asset management for real property	Executive management	CEO	Board	Board and, where required by legislation, the Lieutenant Governor in Council	Executive management
Investment management policies	Executive management	CEO	Board	Board	Executive management
Purchasing policies	Executive management	CEO	Board	Board	Executive management
Appointment of external auditor	Executive	Board		Executive	CEO and

Responsibility	Prepare/Propose /Inform	Recommend	Review/ Advise	Approve/ Decide **	Execute/ Report ***
	management			Gov't	executive management
Classification of employers (industry groupings)	Executive management	CEO		Board	CEO and executive management
Classification of employers (individual employers)	Executive management	Executive management	Board	CEO	CEO and executive management
Assessment of employers (rate setting)	Executive management	CEO		Board	CEO and executive management
Compensation to workers (benefit levels)	Executive management	CEO		Board	Executive management
Rate rebates to employers	Executive management	CEO	Board		Executive management
Performance to budget	Executive management	CEO	Board	Authority for adjustment (1) CEO $\leq$ 1% Board $>$ 1%	Executive management
Operating policies other than rate/ benefit setting	Executive management	Executive management	Board	CEO	Executive management
Appeals to the Board					
Appeal of classification decision	Individual employers		Board	Board	Executive management
Appeal of compensation/benefit decision	Individual workers		Board	Board	Executive

Responsibility	Prepare/Propose /Inform	Recommend	Review/ Advise	Approve/ Decide **	Execute/ Report ***
	or employers				management
Risk Management					
Identification of risks	Executive management	CEO	Board in consultation with executive mgmt	Board	Executive management
Completion of risk management plan	Executive management	CEO	Board	CEO in consultation with Board	Executive management
Day-to-day risk management based on established policy	Executive management		Board	Executive management	Executive management
Board operations					
Board meeting agendas	Executive management	CEO	Board	Chairperson on behalf of the Board	CEO and Board
Terms of reference for Board committees	CEO/Executive management	CEO/Executive management	Board	Board	Board with support from executive management

K. BOARD ADOPTED POLICIES AND PROCEDURES (2000-2006)

CP#	Topic	Type	POL.#	Policy Approved	PRO#	Procedure Approved	Year
2006							
333	Medical Boards - Repeal	Policy Only	POL 02/2006	10-Jan-06			2006
375	Wage Base, Maximum Assessable	Policy Only	POL 01/2006	18-Jan-06			2006
370	Compensation Rate - Maximum 2006 - S.38	Policy Only	POL 03/2006	25-Jan-06			2006
374	Experience Rating Program	Policy Only	POL 05/2006	14-Feb-06			2006
380	Classification of Industries - 2006 Premium Rates	Policy Only	POL 06/2006	28-Feb-06			2006
338	PFI - General	Procedure Only			ADM 01/2006	16-Jan-06	2006
396	Approval of 2006 Budget	Policy Only			ADM 02/2006	5-Oct-06	2006
105	Coverage - Volunteer Fire Fighters	Policy & Procedure	POL 04/2006	10-Jan-06	PRO 04/2006	8-Feb-06	2006
349	Medical Fees - Audiology	Procedure Only			PRO 50/2006	9-Jan-06	2006
330	Reversing Decisions	Procedure Only			PRO 51/2006	4-Feb-06	2006
391	Medical Fees - Assessment Teams	Procedure Only			PRO 52/2006	24-Aug-06	2006
2005							
334	Funding Policy	Policy Only	POL 01/2005	23-Mar-05			2005
364	Classification of Industries	Policy Only	POL 08/2005	21-Dec-05			2005
271	Business Continuity Plan	Procedure Only			ADM 01/2005	18-Feb-05	2005

CP#	Topic	Type	POI.#	Policy Approved	PRO#	Procedure Approved	Year
245	Safety & Security - Workplace	Procedure Only			ADM 05/2005	15-Sep-05	2005
340	Funding Procedure	Procedure Only			PRO 01/2005	14-Sep-05	2005
306	Sports Professionals, Sports Instructors, Players & Coaches	Policy & Procedure	POI, 02/2005	11-Aug-05	PRO 02/2005	23-Aug-05	2005
291	Storage, Archiving & Destruction of Information	Policy & Procedure	POI, 03/2005	20-Sep-05	PRO 03/2005	27-Sep-05	2005
314	Annuities	Policy & Procedure	POI, 04/2005	27-Sep-05	PRO 04/2005	27-Sep-05	2005
329	Adjudication of Charter/Constitutional Issues	Policy & Procedure	POI, 05/2005	21-Sep-05	PRO 05/2005	21-Sep-05	2005
36	Coverage - First Responders	Policy & Procedure	POI, 07/2005	24-Oct-05	PRO 07/2005	24-Oct-05	2005
342	Medical Fees - Chiropractors	Procedure Only			PRO 50/2005	15-Apr-05	2005
343	Calculation of Net Compensation Payable	Procedure Only			PRO 51/2005	13-Sep-05	2005
353	Travel & Sustenance - PSC Rates	Procedure Only			PRO 52/2005	14-Sep-05	2005
363	Medical Fees - Physicians	Procedure Only			PRO 53/2005	18-Nov-05	2005
339	Medical Fees - Assessment Teams	Procedure Only			PRO 54/2005	18-Nov-05	2005
357	Minimum Compensation - 2006 - S. 76	Procedure Only			PRO 55/2005	1-Dec-06	2005
365	Expenses - Traveling & Sustenance	Procedure Only			PRO 56/2005	7-Dec-05	2005
367	Penalty, Default in Assessment Payment	Procedure Only			PRO 57/2005	9-Dec-05	2005
358	Minimum Average Weekly Earnings	Procedure Only			PRO 58/2005	22-Dec-05	2005

CP#	Topic	Type	POL#	Policy Approved	PRO#	Procedure Approved	Year
371	Consumer Price Index - 2005 Increase	Procedure Only			PRO 59/2005	22-Dec-05	2005
2004							
323	Classification of Industries - 2005 Provisional Premium Rates	Policy Only	POL 11/2004	16-Dec-04			2004
307	Occupational Disease	Policy Only	ADM 03/2004	8-Aug-04			2004
320	Modifications - Residential, Vehicle & Workplace	Policy Only	ADM 04/2006	12-Oct-04			2004
310	Average Weekly Earnings - S. 70(4)	Policy Only	ADM 05/2004	5-Oct-04			2004
332	Experience Rating Program	Policy Only	ADM 06/2004	10-Nov-04			2004
281	Compensation Rate - Maximum 2005 S. 38	Policy Only	POL 10/2004	15-Dec-04			2004
0	Injuries - Occupational Disease	Procedure Only			ADM 03/2004	11-Aug-04	2004
92	PHI - Hearing Loss	Policy & Procedure	POL 01/2004	26-Jan-04	PRO 01/2004	5-Mar-04	2004
99	Disfigurement Awards	Policy & Procedure	POL 02/2004	23-Feb-04	PRO 02/2004	8-Mar-04	2004
296	Experience Rating Program	Policy & Procedure	POL 03/2004	14-Jun-04	PRO 03/2004	19-Jul-04	2004
71	Injuries - Cardiac	Policy & Procedure	POL 04/2004	13-Jul-04	PRO 04/2004	19-Jul-04	2004
4	Equipment & Tools - Voc. Rehabilitation	Policy & Procedure	POL 05/2004	14-Jul-04	PRO 05/2004	25-Oct-04	2004
50	Vocational Rehabilitation - Programs & Services	Policy & Procedure	POL 06/2004	14-Jun-04	PRO 06/2004	26-Jul-04	2004
297	Assessable Labour Portion of Contracts	Policy & Procedure	POL 07/2004	12-Oct-04	PRO 07/2004	14-Oct-04	2004

CP#	Topic	Type	POL#	Policy Approved	PRO#	Procedure Approved	Year
65	Coverage - Students in Work Based Learning Assignments	Policy & Procedure	POL 08/2004	14-Sep-04	PRO 08/2004	14-Sep-04	2004
318	Allowance - Independence	Policy & Procedure	POL 09/2004	18-Nov-04	PRO 09/2004	25-Nov-04	2004
299	Calculation of Net Compensation Payable	Procedure Only			PRO 50/2004	18-Mar-04	2004
304	Fees for Chiropractors	Procedure Only			PRO 51/2004	29-Mar-04	2004
301	Fee Increase for Secondary/Tertiary Treatment Centres	Procedure Only			PRO 52/2004	10-Mar-04	2004
266	Self-Employment - Individualized Vocational Plan	Procedure Only			PRO 53/2004	23-Aug-06	2004
324	Expenses - Traveling & Sustenance - PSC Rates	Procedure Only			PRO 54/2004	7-Dec-04	2004
328	Minimum Compensation, 2005 - S. 76	Procedure Only			PRO 55/2004	7-Dec-04	2004
327	Minimum Average Weekly Earnings	Procedure Only			PRO 56/2004	7-Dec-04	2004
322	Penalty, Default in Assessment Payment	Procedure Only			PRO 57/2004	15-Dec-04	2004
325	Consumer Price Index - 2004 Increase	Procedure Only			PRO 58/2004	18-Dec-04	2004
2003							
88	Expenses, Traveling & Sustenance - General	Policy Only	POL 07/2003	21-May-03			2003
286	Classification of Industries - 2004	Policy Only	POL 15/2003	22-Dec-06			2003

CP#	Topic	Type	POL#	Policy Approved	PRO#	Procedure Approved	Year
	Provisional Rates						
288	PFI - Raynaud's Phenomenon	Policy Only	ADM 03/2003	5-Nov-03			2003
287	PFI - Allergies	Policy Only	ADM 04/2003	4-Nov-03			2003
294	Garnishment of Benefits	Policy Only	ADM 06/2003	31-Dec-03			2003
145	Coverage, Notice of Application	Policy Only	POL 01/2003	2-Jan-03			2003
270	Injuries - Fire Fighters & Cancer Related to Combustion	Policy Only	POL 09/2003	23-Oct-03			2003
116	Average Weekly Earnings - S. 80(4)	Policy Only	POL 06/2003	27-Jun-03			2003
283	Wage Base, Maximum Assessable	Policy Only	POL 08/2003	20-Nov-03			2003
278	Access/Collection/Release of Information	Policy Only	POL 12/2003	5-Nov-03			2003
281	Compensation Rate, Maximum, 2004 - S. 38	Policy Only	POL 14/2003	18-Dec-03			2003
275	Maximum Earners - No CPI of Canada Disability/Survivor Benefits or Estimated/ Actual Earnings	Policy Only	ADM 02/2003	5-Nov-03			2003
268	Interest on Benefits Accruing from Successful Appeals	Policy Only	POL 05/2003	21-May-03			2003
267	Allowance - Independence	Policy & Procedure			ADM 02/2003	14-Apr-03	2003
148	Section 38.1 - Maximum Wage Rate	Policy & Procedure	POL 02/2003	4-Feb-03	PRO 02/2003	12-Feb-03	2003
147	Allowance - Independence	Policy & Procedure	POL 03/2003	28-Feb-03	PRO 03/2003	18-Mar-03	2003
280	Annuities	Policy & Procedure	POL 04/2003	13-May-03	PRO 04/2003	13-May-03	2003
269	Expenses, Traveling & Sustenance -	Procedure Only			PRO 07/2003	27-May-03	2003

CP#	Topic	Type	POL#	Policy Approved	PRO#	Procedure Approved	Year
	PSC Rates						
276	Average Weekly Earnings - S. 70(4)	Policy & Procedure	POL 10/2003	14-Oct-03	PRO 10/2003	22-Dec-03	2003
59	Injuries - Occupational Disease	Policy & Procedure	POL 11/2003	12-Nov-03	PRO 11/2003	31-Dec-03	2003
26	PFI - General	Policy & Procedure	POL 13/2003	24-Nov-03	PRO 13/2003	22-Dec-03	2003
128	Calculation of Net Compensation Payable	Procedure Only			PRO 50/2003	10-Apr-03	2003
0	Fees for Services Provided by Chiropractors Licensed to Practice in Saskatchewan	Procedure Only			PRO 51/2003	27-Jun-03	2003
273	Expenses, Traveling & Sustenance - PSC Rates (amended by PRO 07/2003)	Procedure Only			PRO 52/2003	1-Aug-03	2003
294	Penalty, Default in Assessment Payment	Procedure Only			PRO 53/2003	18-Dec-03	2003
280	Minimum Average Weekly Earnings 2003 - S. 70(5)	Procedure Only			PRO 54/2003	18-Dec-03	2003
282	Consumer Price Index, 2003 Increase	Procedure Only			PRO 56/2003	19-Dec-03	2003
2002							
262	Compensation Rate, Maximum 2003 - S. 38	Policy Only	POL 11/2002	16-Dec-02			2002
103	Revenue & Employer Accounts - Write-Offs	Policy Only	ADM 03/2002	14-May-02			2002
102	Classification of Industries - 2003	Policy Only	POL 12/2002	16-Dec-02			2002

CP#	Topic	Type	POL#	Policy Approved	PRO#	Procedure Approved	Year
	Provisional Rates						
73	Access/Collection/Release of Information	Policy Only	POL 14/2002	20-Dec-02			2002
106	Suspension of Benefits - Pregnancy	Policy Only	POL 05/2002	20-Mar-00			2002
148	Wage Base, Maximum Assessable	Policy Only	POL 13/2002	12-Dec-02			2002
17	Modifications - Residential, Vehicle & Workplace	Policy Only	POL 02/2002	25-Jan-02			2002
103	Compensation Rate - Where no earnings at disablement of death	Policy Only	POL 08/2002	18-Sep-02			2002
0	Information Technology Security	Procedure Only			ADM 02/2002	16-Dec-02	2002
13	Overpayment Recovery	Policy & Procedure	POL 01/2002	5-Feb-02	PRO 01/2002	14-Feb-02	2002
257	Funding Policy	Policy & Procedure	POL 03/2002	22-Mar-02	PRO 03/2002	25-Apr-02	2002
107	Suspension of Benefits	Policy & Procedure	POL 04/2002	20-Mar-02	PRO 04/2002	6-May-02	2002
109	Safety Association Funding	Policy & Procedure	POL 06/2002	31-May-02	PRO 06/2002	20-Jun-02	2002
240	Out of Province Employers - Coverage Within Saskatchewan	Policy & Procedure	POL 07/2002	29-Jul-02	PRO 07/2002	31-Jul-02	2002
146	Annuities	Policy & Procedure	POL 09/2002	12-Dec-02	PRO 09/2002	30-Dec-02	2002
38	Fatalities - Presumption	Policy & Procedure	POL 10/2002	18-Dec-02	PRO 10/2002	31-Dec-02	2002
178	Fees for Services Provided by Physical Therapists Licensed to Practice in Saskatchewan	Procedure Only			PRO 100/2002	18-Jan-02	2002
229	Board Employee Travel & Other	Procedure Only			PRO 101/2002	7-Feb-02	2002

CP#	Topic	Type	POL#	Policy Approved	PRO#	Procedure Approved	Year
	Reimbursable Expenses						
	Medical Fees - Hospital Per Diem In-patient Rate	Procedure Only			PRO 102/2002	30-May-02	2002
0	Review, Storage & Access to Board Agreements & Contracts	Procedure Only			PRO 103/2002	25-Nov-02	2002
0	Fees for Services Provided by Chiropractors Licensed to Practice in Saskatchewan	Procedure Only			PRO 104/2002	25-Nov-02	2002
0	Fees for Services Provided by Occupational Therapists	Procedure Only			PRO 105/2005	25-Nov-02	2002
264	Minimum Compensation, 2003 - S. 76	Procedure Only			PRO 106/2002	11-Dec-02	2002
261	Penalty, Default in Assessment Payment	Procedure Only			PRO 107/2002	6-Dec-02	2002
263	Minimum Average Weekly Earnings	Procedure Only			PRO 108/2002	11-Dec-02	2002
265	Consumer Price Index, 2002 Increase	Procedure Only			PRO 109/2002	20-Dec-02	2002
266	Expenses, Traveling & Sustenance - General	Procedure Only			PRO 111/2002	20-Dec-02	2002
81	Storage, Archiving & Destruction of Information	Policy & Procedure	POL 15/2002	20-Dec-02	PRO 15/2002	31-Dec-02	2002
2001							

CP#	Topic	Type	POL#	Policy Approved	PROC#	Procedure Approved	Year
16	Replacement or Repair of Orthotics/ Appliances Broken During a Work Accident	Policy Only	POL 04/2001	15-Feb-01			2001
1	Determination of Loss of Earnings	Policy Only	POL 14/2001	5-Dec-01			2001
208	Policy Manual Review and Publishing Procedures	Policy Only	ADM 01/2001	8-Jan-01			2001
228	Allowance - Clothing	Policy Only	POL 02/2001	15-Feb-01			2001
7	Minimum Compensation Rate/Weekly Earnings	Policy Only	POL 18/2001	7-Dec-01			2001
245	Classification of Industries & 2002 Provisional Premium Rates	Policy Only	POL 17/2001	7-Dec-01			2001
247	Compensation Rate, Maximum	Policy Only	POL 15/2001	7-Dec-01			2001
248	Assessment - Minimum Employer Personal Coverage	Policy Only	POL 19/2001	11-Dec-01			2001
192	In the Course of Employment	Policy Only	POL 12/2001	30-Nov-01			2001
48	Injuries - Asbestos Related Cancer	Policy Only	POL 12/2001	30-Nov-01			2001
125	Family Support in Exceptional Circumstances	Policy Only	POL 11/2001	30-Nov-01			2001
237	Early Intervention Program (EIP) Evaluation Report	Policy Only	ADM 05/2001	18-Jan-01			2001
249	Wage Base, Minimum Assessable	Policy Only	POL 16/2001	7-Dec-01			2001
189	Amendments to PET - General (POL 08/98) & Second Injury & Re-	Policy Only	ADM 02/2001	3-Jan-01			2001

CP#	Topic	Type	POL#	Policy Approved	PRO#	Procedure Approved	Year
	employment Reserve (POL 14/99)						
23	Relocation Allowance	Policy Only	POL 10/2001	30-Nov-01			2001
223	Stress Claims - Federal Government Employees	Policy Only	POL 01/2001	5-Feb-01			2001
15	Provision of Orthotics/ Appliances as a Result of a Work Injury	Policy Only	POL 03/2001	15-Feb-01			2001
231	Minimum Annual Assessment	Policy Only	POL 05/2001	12-Mar-01			2001
25	Termination - Age 63 & Over, Age 65 & Retirement	Policy Only	POL 06/2001	15-Jun-01			2001
51	Interest on Employer Account Refunds	Policy Only	POL 07/2001	4-Sep-01			2001
19	Termination of Compensation Benefits - Notice	Policy Only	POL 08/2001	23-Sep-01			2001
225	Reimbursement for Medications	Policy & Procedure	POL 09/2001	101-50-1	PRO 09/2001	6-Nov-01	2001
179	Fees for Services Provided by Chiropractors Licensed in Saskatchewan	Procedure Only			PRO 100/2001	9-Jan-01	2001
190	Disposal of Surplus Goods/ Assets	Procedure Only			PRO 101/2001	8-Mar-01	2001
0	Amended Fees for Services Provided by Chiropractors Licensed in Saskatchewan	Procedure Only			PRO 102/2001	22-Jun-01	2001
0	Fees for Services Provided by Psychologists & Counselors	Procedure Only			PRO 103/2001	22-Jun-01	2001

CP#	Topic	Type	POL#	Policy Approved	PRO#	Procedure Approved	Year
246	Minimum Compensation, 2002 - S. 76	Procedure Only			PRO 104/2001	27-Nov-01	2001
0	Expenses, Traveling & Sustenance - General	Procedure Only			PRO 105/2001	4-Dec-01	2001
250	Penalty, Default in Assessment Payment	Procedure Only			PRO 106/2001	11-Dec-01	2001
0	To Establish 2002 Increase in Consumer Price Index (CPI)	Procedure Only			PRO 107/2001	20-Dec-01	2001
252	Minimum Average Weekly Earnings, 2002 - S. 70(5)	Procedure Only			PRO 108/2001	17-Dec-01	2001
80	Medical Review Panels	Policy & Procedure	POL 20/2001	13-Dec-01	PRO 20/2001	20-Dec-01	2001
202	Compensation Rate - Apprentices and On-the-Job Training	Policy & Procedure	POL 21/2001	13-Dec-01	PRO 21/2001	20-Dec-01	2001
2000							
133	Return-to-Work Plans - Spouse	Policy Only	POL 06/2000	28-Aug-00			2000
3	Coverage - Independent Worker	Policy Only	POL 15/2000	13-Dec-00			2000
215	Compensation Rate, Maximum, 2001 - S. 38	Policy Only	POL 14/2000	4-Dec-00			2000
107	Inclusion of Former Procedure in Policy	Policy Only	ADMI 03/2000	10-Jan-00			2000
219	Classification of Industries & Provisional Premium Rates	Policy Only	POL 13/2000	6-Dec-00			2000
209	Interjurisdictional Agreement on Worker's Compensation	Policy Only	POL 12/2000	1-Dec-00			2000

CP#	Topic	Type	POL#	Policy Approved	PRO#	Procedure Approved	Year
217	Wage Base, Maximum Assessable 2001	Policy Only	POL 10/2000	16-Nov-00			2000
148	Maximum Earners - No CPI of Canada Disability Benefits or Estimate/Actual Earnings	Policy Only	POL 09/2000	27-Nov-00			2000
170	PFI - Raynaud's Phenomenon	Policy Only	POL 07/2000	10-Aug-00			2000
173	Reclassification of Forest Management License Agreement	Policy Only	POL 02/2000	18-Apr-00			2000
214	Policy Amendment - Incidental Incursions	Policy Only	ADM 11/2000	4-Dec-00			2000
210	Policy Amendment - Suspension of Benefits	Policy Only	ADM 10/2000	27-Nov-00			2000
47	Return-to-Work Plan Expenditures	Policy Only	ADM 04/2000	10-Jan-00			2000
149	CEO Authority for Procurement	Policy Only	ADM 02/2000	20-Dec-99			2000
146	Policy Amendment - Compensation Rate - Where no earnings at disablement or death	Policy Only	ADM 06/2000	1-May-00			2000
175	Pre-existing Conditions	Policy & Procedure	POL 01/2000	3-Apr-00	PRO 01/2000	20-Apr-00	2000
224	Incidental Incursions	Policy & Procedure	POL 03/2000	29-May-00	PRO 03/2000	9-Jan-01	2000
172	Allowance - Temporary Additional Expenses	Policy & Procedure	POL 04/2000	23-May-00	PRO 04/2000	6-Jul-00	2000
23	Personal Care Allowance	Policy & Procedure	POL 05/2000	28-Aug-00	PRO 05/2000	2-Jan-01	2000
94	Annuities	Policy & Procedure	POL 08/2000	14-Nov-00	PRO 08/2000	2-Jan-01	2000
136	Bridging Program	Policy & Procedure	POL 11/2000	20-Nov-00	PRO 11/2000	10-Jan-01	2000

CP#	Topic	Type	POL#	Policy Approved	PRO#	Procedure Approved	Year
150	Procurement Procedure	Procedure Only			PRO 50/2000	1-Feb-00	2000
188	Microsoft Enterprise License	Procedure Only			PRO 51/2000	19-Apr-00	2000
177	Expenses, Travelling & Sustenance	Procedure Only			PRO 52/2000	19-Apr-00	2000
181	Fees for Services Provided by Exercise Therapists with Designation of Professional Fitness & Lifestyle Consultant or Certified Fitness Consultant	Procedure Only			PRO 53/2000	17-May-00	2000
67	Return-to-Work Plans by Vocational Services	Procedure Only			PRO 54/2000	26-Oct-00	2000
184	Fees for Services Provided by Audiologists Registered with Sask. Assoc. of Speech Language Pathologists & Audiologists	Procedure Only			PRO 55/2000	26-Oct-00	2000
183	Fees for Services Provided by Massage Therapists Registered with the Massage Therapist Assoc. of Sask.	Procedure Only			PRO 56/2000	26-Oct-00	2000
207	Minimum Compensation, 2001 - S. 76	Procedure Only			PRO 57/2000	31-Oct-00	2000
206	Minimum Average Weekly Earnings, 2001 - S. 70(5)	Procedure Only			PRO 58/2000	31-Oct-00	2000
108	Issuance of Procedures Manual with Housekeeping Amendments	Procedure Only			PRO 60/2000	10-Nov-00	2000

CP#	Topic	Type	POB #	Policy Approved	PRO#	Procedure Approved	Year
216	Penalty, Default in Assessment Payment	Procedure Only			PRO 61/2000	30-Nov-00	2000
211	Suspension of Benefits - Amendment	Procedure Only			PRO 62/2000	22-Nov-00	2000
218	Consumer Price Index, 2000 Increase	Procedure Only			PRO 63/2000	22-Nov-00	2000
180	Fees for Services Provided by Occupational Therapists	Procedure Only			PRO 59/2000	26-Oct-00	2000





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